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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi-2, the 22nd January 1957

S.R.O. 465.—Whereas the election of Shri Harish Chandra Bajpai, resident of Councillors' Residence, Lucknow, and Shri Ram Shanker Ravivasi, resident of Alamnagar, Lucknow, as members of the Legislative Assembly of the State of Uttar Pradesh from the Lucknow Central (double member) constituency has been called in question by an election petition duly presented under part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Triloki Singh, son of Shri Gokaran Dayal Singh, resident of Ghasiarimandi, Lucknow City;

And whereas, the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

On an appeal filed by Sarvashri Harish Chandra Bajpai, and Ram Shanker Ravivasi, the Supreme Court of India has set aside the said order of the Tribunal declaring the election of the successful candidates to be void *vide* the Supreme Court's Judgment dated the 21st December, 1956 (Annexure I).

BEFORE THE ELECTION TRIBUNAL, LUCKNOW

PRESENT

Sri Raghunandan Saran (Retired District Judge)—*Chairman.*

Sri A. Sanyal—*Advocate Member.*

Sri M. U. Faruqi (Retired Distt. Judge)—*Judicial Member.*

ELECTION PETITION No. 320 OF 1952

Petition under Section 80 and 81 of the Representation of the People Act, 1951 [Lucknow (Central) Constituency of the Lucknow District of the U.P. Legislative Assembly]

Petitioner—

Shri Triloki Singh, son of Sri Gokaran Dayal Singh, resident of Ghasiarimandi, Lucknow City (U.P.)

Versus

Respondents—

1. Sri Harish Chandra Bajpai, resident of Councillors' Residence, Lucknow.
2. Sri Ram Shanker Ravivasi, resident of Alamnagar, Lucknow.
3. Sri Gaya Prasad Gupta, Proprietor, Gupta Printing Press, Hewett Road, Lucknow.
4. Sri Raghuraj Singh, B.Sc., LL.B., Nishatganj, Lucknow.
5. Sri Surendra Nath, C/o. Sri Sheo Ram Vaidya, Rasainshala, Aminabad, Lucknow.
6. Sri Sheo Kumar Dwivedi, Birhana, Lucknow.
7. Sri Gulab Das, Yehiaganj, Chamar Tolia, Lucknow.
8. Sri Gaya Prasad Kureel, C/o. Scheduled Castes Federation Office, A. P. Sen Road, Lucknow.
9. Sri Sant Ram, Teacher, Amethi, District Lucknow.
10. Sri Maikoo Ram, C/o. Sri Sheo Kumar Dwivedi, Birhana, Lucknow.
11. Sri Balbhaddar Singh, Amausi, District Lucknow.
12. Sri Kamla Kant Dwivedi, Grameen Ghee, Birhana, Lucknow.
13. Sri Mahipal Singh, C/o. U.P. State Congress Committee Office, 19, Kaisarbagh Lucknow.
14. Sri Sri Kant Shastri, Chauraha Husainganj, Lucknow.
15. Sri Lila Ram C/o. District Congress Committee Office, Lucknow.

JUDGMENT

Per R. Saran and A. Sanyal

1. That is an election petition under Sections 80 and 81 of the Representation of the People Act, 1951, calling in question the election to the Uttar Pradesh Legislative Assembly from the Lucknow Central Constituency of the Lucknow district. This is a two member constituency, one of the two seats being reserved for the Scheduled Castes candidates. The date of polling was 31st January, 1952, and as a result of the counting of votes the respondents No. 1 and 2, Sri Harish Chandra Bajpai, and Sri Ram Shanker Ravivasi, were declared elected. These respondents stood on the Congress ticket and the respondent No. 2 Sri Ravivasi is of the Scheduled Castes. The petitioner is Sri Triloki Singh, who himself was a candidate for the general seat on the Kisan Mazdoor Praja Party ticket; the candidate of this party for the reserved seat was Sri Gulab Das, respondent No. 7. Respondents No. 3 to 6 and 8 to 15 were the other candidates in this election and out of them respondents No. 11 to 15 withdrew within the prescribed period so that the contest was between the respindents Nos. 1 to 10 and the petitioner only. The election petition was presented on 10th June, 1952, challenging the election of the respondents No. 1 and 2 on the ground of several corrupt practices and irregularities set forth in paras No. 7 to 12, 14 and 15 of the petition and schedules No. I to IV attached to the petition and the prayer is that the election of the respondents No. 1 and 2 be declared void and also that the election as a whole be declared void.

2. The respondents No. 1 and 2 filed separate written statements denying the allegations of corrupt practices and irregularities and contending that no corrupt practices or irregularities had been committed and that the election was, therefore, not liable to be set aside. They also contended that some of the allegations of the petition and its schedules were vague and indefinite and that the petition and its schedules had not been properly signed and verified.

3. On the pleading of the petitioner and the respondents No. 1 and 2 twelve issues were struck on 17th January, 1953, and a 13th issue was added on 25th February, 1953. The issues No. 1 to 4 and 13 were based upon the respondents' pleas that the allegations in the petition and its schedules were vague and indefinite and that the petition and the schedules were not properly signed and verified. On the request of the respondents the case was first heard as regards these five preliminary issues and they were disposed of by our order dated 31st October, 1953, attached as Annexure B to this order; by that order certain portions of the petition and its schedules were ordered to be scored out on the ground of vagueness and indefiniteness and the petitioner was ordered

to give further and better particulars in respect of some of his allegations and also to remedy the defect of verification.

4. In the mean time the petitioner presented an application on 27th February, 1953, for amendment of para. 7C of his election petition which para. is about the major corrupt practice of obtaining assistance from persons serving under the Government as defined in Section 123(8) of the Representation of the People Act, 1951. The original para. 7C did not contain any allegation that the respondents No. 1 and 2 obtained any help from any village headmen also, but in the amendment application it was alleged that help had been obtained from 11 village headmen or Mukhias. This application for amendment was vehemently opposed by the respondents No. 1 and 2 but it was ultimately allowed by the Tribunal on 28th November 1953, and that order dated 28th November, 1953, is attached as Annexure A to this order. The Advocate Member and the Chairman were for allowing the amendment, and although the Judicial Member dissented the opinion of the majority prevailed under Section 104 of the Representation of the People Act, 1951. From the order of the Tribunal dated 28th November, 1953, allowing the amendment the respondents No. 1 and 2 went up to the Hon'ble High Court by means of a writ petition but were unsuccessful there also.

5. The issues that now remain for determination in this case are the following issues No. 5 to 12:—

(5) Are the allegations of corrupt and illegal practices true in substance? If so, what is the effect thereof?

(6) (a) Whether the returns of election expenses filed by respondents No. 1 and 2 were false in any material particulars as alleged in paragraph 7(L) of the petition? If so, what is the effect thereof?

(b) Whether those returns did not comply with the requirements of law as alleged in paragraph 7(M) of the petition?

(7) Whether the allegations made in paragraph 8 of the petition with regard to election expenses are correct and did respondent No. 1 make a false declaration in the return? If so, what is its effect?

(8) Were the irregularities alleged in paragraphs 10, 11 and 12 of the petition really made and has the result of the election been materially affected thereby?

(9) Did the Congress organisation spend any money in furtherance of the election of the respondents No. 1 and 2? Was it spent within their knowledge or with their connivance? Was such an expense required to be included in the returns of election expenses of respondents 1 and 2? Would such an inclusion exceed the maximum limit of expenses provided by law? What would be the effect of it?

(10) Were leaflets and pamphlets mentioned in Schedule 4 of the petition issued by the Information Department of the U.P. Government and were they distributed and broadcast in the Constituency by respondents 1 and 2 and their agents? Was it with the object of furthering their election? Would it amount to "a corrupt practice" as defined in the Act?

(11) Whether the allegations contained in paragraph 15 of the petition are true? Were the voters terrorized on that score and has the result of the election been materially affected thereby?

(12) To what relief, if any, is the petitioner entitled.

6. In support of his case the petitioner has examined 59 witnesses including himself and has proved 230 documents. The respondent No. 1 has examined 55 witnesses including himself and proved four documents whereas the respondent No. 2 has given no oral or documentary evidence at all and has not even himself come into the witness box and he simply relies upon the documentary and oral evidence adduced by the respondent No. 1. We now proceed to determine the issues No. 5 to 12

7. *Issue No.* 5.—It may be mentioned that no illegal practice has been alleged in this case. The allegations about the corrupt practices are contained in paragraphs No. 7, 8, 9, 14 and 15 of the petition, paragraph No. 7 being divided into sub-paras A to M. Some of these allegations have been ordered to be scored out by our order dated 31st October 1953, on the ground of their being vague and

indefinite and they are those of bribery contained in para 7A(III), of the procuring of vehicles contained in para 7B, of undue influence being exercised at the Arjunganj Sarsawan polling station contained in para 7D, of the appeal to Brahmin voters on the ground of caste contained in para 7J and of the use of national symbols contained in para 7K. Also some other allegations have been given up by the petitioner himself in the course of the trial by adducing almost no evidence in respect of them and by stating at the time of arguments that he did not press them and they are those of bribery contained in para 7A(I), (II) and (IV), of undue influence contained in para 7I, and of the returns of election expenses being not in the proper form contained in para 7M. The allegations of corrupt practices that remain, therefore, for investigation in this case are those of obtaining the assistance of persons serving under the Government contained in para 7C and para 9, of obtaining the assistance of the polling officials at the Bahru and Behta polling stations contained in para 7E and G, of undue influence being exercised at the Chandrawal polling station and in the Banthra market contained in para 7F and para 15, of the incurring of expenditure and employing of persons in contravention of the Act contained in para 7H and L and para 8 and of the returns of election expenses and the accompanying declarations being false in material particulars contained in para 7L. It may be added that para 14 also has been ordered by us to be deleted, but this deletion is not very material as the same allegations are contained in para 7L (XIII) which stands allrnght. Out of the allegations of corrupt practices that thus remain for investigation we shall deal under issue No. 5 the allegations of para 7C, E, F, G and H and para 8 only, the other allegations forming the subject matter of issues Nos. 6, 7, 9, 10, and 11.

8. We shall begin with the allegations of para 7C about the obtaining of assistance from persons serving under the Government, which is a major corrupt practice under Section 123(8) of the Representation of the People Act, 1951. These allegations are with reference to two functions held at Kakori in this constituency, one on 16th December 1951, and the other on 27th December 1951, and to the assistance said to have been given by the village headmen or Mukhias introduced by means of the amendment application of 27th February 1953. To take up the Kakori functions first, para 7C of the election petition is as follows:—

> "That the respondents Nos. 1 and 2 could in furtherance of their election enlist the support of certain Government servants. The District Magistrate, Lucknow, organised the opening of eye relief camps, and these functions were utilised for the election propaganda of the respondents Nos. 1 and 2. An eye relief camp was proposed to be opened on 16th December 1951, at Kakori by Sri C. B. Gupta, Minister, Civil Supplies, U.P., one of the Chief organisers of the election of the respondents Nos. 1 and 2. An election meeting was advertised by the workers of the respondents Nos. 1 and 2 to be held within a short distance of the proposed eye relief camp on the same day. This meeting was amongst others addressed by Sri G. B. Pant, Chief Minister, U.P., Shri C. G. Gupta and the respondent No. 1. It was also attended by the Patwaris and Qanoongo of the Kakori Circle including the Tahsildar, Lucknow, and the Deputy Superintendent of Police, Lucknow.
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> On 27th December 1951, an eye relief camp was similary organised and opened at Kakori. The ceremony this time was performed by Mrs. Vijay Lakshmi Pandit and immediately thereafter from the same platform and at the same place election speeches were made and the audience exhorted to vote for Mrs. Vijay Lakshmi Pandit, a candidate for the House of People from that area and respondents Nos. 1 and 2. This meeting was attended by the District Magistrate, Lucknow, the Sub-Divisional Magistrate, Lucknow, the Deputy Superintendent of Police, Lucknow, the Tahsildar, Lucknow, and the Patwaris and Qanoongo of Kakori circle. The respondents No. 1 and 2 by this device succeeded in creating an impression on the voters that they had the support of the district officials."

9. In their written statements the respondents No. 1 and 2 denied that in furtherance of their election they enlisted the support of any Government servant. They admitted that their election meeting was held at Kakori on 16th December 1951, and was addressed by Sri G. B. Pant and Sri C. B. Gupta but denied that it was attended by the Tahsildar or the Deputy Superintendent of Police, and they pleaded their want of knowledge as regards the presence of the Patwaris and the Qanoongo. They contended that no eye relief camp was opened on that day nor was any mention of it made in the meeting. It was admitted by them that an

eye relief camp was opened at Kakori by Srimati Vijay Lakshmi Pandit on 27th December 1951, but it was deemed that thereafter from the same platform and at the same place any election speeches were made in support of the candidature of Srimati Pandit (candidate for the House of the People from the same area on the Congress ticket) and the respondents No. 1 and 2, and it was contended that in fact no election meeting was held at Kakori that day. They pleaded their want of knowledge as regards the presence of any Government officials at the function of 27th December, 1951. They denied that there was any device on their part to have this eye relief camp opened and contended that they had no hand in the opening of the relief camp and that they did not utilize any such function for their election propaganda. They denied also that any impression as alleged was or could be created on the voters either by the opening of the eye relief camp or by the presence of any district officials at that time. The respondent No. 2 added also that the State opened the eye relief camp at Kakori on 27th December 1951, in the ordinary course of its functions. At the time of the hearing of the oral evidence in the case the respondents No. 1 and 2 contended also that Sri C. B. Gupta was not present at all in the Kakori meeting of 16th December, 1951.

10. The parties have adduced a lot of evidence about the Kokri function of 16th December 1951, and 27th December 1951, and one thing is certain that no eye relief camp was opened or started at Kakori on 16th December, 1951. The case of the petitioner now is that the eye relief camp was to be opened at Kakori on 16th December 1951, and publicity had been given to this fact but because the arrangements for the function could not be made the idea of opening the camp on 16th December 1951, was given up and the ceremony was postponed to 27th December 1951, on which day it was actually performed. The case of the respondents on the other hand is that there was never any idea that the eye relief camp should be opened on 16th December 1951, *viz.* on the day of their election meeting at Kakori. There is no documentary evidence on the record to show that there was ever any idea that the Kakori eye relief camp should be opened on 16th December 1951, and the oral evidence that there was such an idea which was abandoned subsequently does not appear to us to be satisfactory or reliable. The election meeting of the respondents No. 1 and 2 and Srimati Pandit to be held at Kakori on 16th December 1951, had been duly announced by means of a printed leaflet Ex. P173 and it was certainly held, but we do not think that it had anything to do with any eye relief camp.

11. The evidence of the petitioner is to the effect that the Kakori function of 16th December 1951, was attended by the Patwaris and Qanoongo of the Kakori circle and the Tahsildar and the Deputy Superintendent of Police of Lucknow, that the Patwaris had been specially instructed by the Qanoongo in writing to attend this function with residents of their circles and that not only did the patwaris attend the function but also they borrowed some articles of furniture locally for the function and gave a helping hand in setting up the pandal and making other arrangements for it. The respondents have adduced evidence to rebut this evidence of the petitioner and their case is that the articles of furniture for the meeting of 16th December 1951 were supplied by R.W. 44 Hamid Ali contractor of Lucknow under an order from the respondent No. 1 and he was paid Rs. 200/- on this account by means of the receipt Ex. R3 attached to the return of election expenses of the respondent No. 1, while the pandal was set up and other arrangements made by the Congress workers and sympathisers of the locality and the neighbourhood, who may have also borrowed a few articles of furniture locally for the function, and we see no good reason to believe the case of the petitioner on this point in preference to the case of the respondents specially when in the election petition there is no allegation that the patwaris etc. borrowed any articles of furniture for the function of 16th December 1951, or rendered any assistance in the setting up of the pandal or in the making of any arrangements for this function.

12. A few patwaris of the Kakori circle do certainly appear to have been present at the function of 16th December, 1951 and the fact of their presence is supported by the relevant entries in their Roznamchas or diaries. These patwaris are P.W. 3 Debi Prasad with his diary Ex.P2 and P.W. 5 Mool Chand with his diary Ex P4: P W 23 Raj Bahadur Patwari also claims to have been present at Kakori on 16th December, 1951 but his diary does not support him on this point. Another patwari said to have been present was Babu Lal but he has not been examined by the petitioner and only his diary Ex.P226 was got proved by R.W. 51 Krishna Kumar Patwari. However, these entries of the diaries do not mention in definite terms that the patwaris were present that day at Kakori under any orders or for the opening ceremony of any eye relief camp, and Bhagwan Prasad Patwari R.W. 12 and Krishna Kumar R.W. 51 say that there were no such orders nor was there any information

that an eye relief camp would be opened on 16th December 1951. Bhagwan Prasad mentions the presence of the Tahsildar and the Qanoongo also on 16th December 1951, in addition to patwaris and says that at some distance from the place of the meeting the Sub-Inspector of Police was also present along with some constables. The Sub-Inspector and constables must have been present to maintain law and order only as it was a big gathering. The Tahsildar, the Qanoongo and the patwaris may have been present of their own accord and free will simply to hear Sri G. B. Pant who was not only the Chief Minister of U.P. but is also a public man of great popularity and renown. In any case there was no legal prohibition or bar for the Government servants against attending the election meetings of the Congress or any other party or candidate and listening to the speeches there provided these Government servants did not take any other part in these meetings, and in the election petition itself no more than the mere presence of the Government servants at the Kakori meeting of 16th December 1951 is pleaded. Further, there is nothing on the record to show that the respondents No. 1 and 2 or their workers or agents were in any way instrumental in bringing about the presence of these Government servants at Kakori on 16th December, 1951, or that they took or attempted to take any advantage of the presence of these Government servants in furtherance of the prospects of the election of the respondents No. 1 and 2.

13. After the Kakori function of 16th December, 1951, we come to the function held at Kakori on 27th December 1951. This was the opening ceremony of the eye relief camp performed by Srimati Pandit who in addition to her being a politician of international name and universal celebrity, happened also to be the Congress candidate for the House of the People from this very area in this election. It was not an altogether non-official function and certainly had an official tinge in as much as it was presided over by the District Magistrate of Lucknow and was attended not only by the public but also by a number of officials interested in the eye relief work. This eye relief camp was organised by the Lucknow District Eye Relief Committee whose object is to give eye relief to the rural population of the District; this Committee consists of officials and non-officials with the District Magistrate as the Chairman and its expenses are met from public subscription as well as from Government grant. This Committee has two eye relief units, one of the Lucknow Medical College and the other of the Balrampur Hospital of Lucknow, the Balrampur Hospital being a Government institution. Dr. D. N. Sharma R.W. 41 is and was in those days the Superintendent of the Balrampur Hospital and Addl. Civil Surgeon of Lucknow and he ran the eye relief camp with the help of his colleagues and assistants, including R.W. 43, Dr. Hansraj, Eye Specialist of the Balrampur Hospital and an eminent Ophthalmologist of Lucknow. This function was also attended by Sri C. B. Gupta, a Minister of U.P. whose portfolio included the Medical and Health Department. The complaint of the petitioner is that immediately after the opening ceremony of the eye relief camp some election speeches were made from the same platform and at the same place exhorting the audience to vote for Srimati Pandit and the respondents No. 1 and 2 in the impending election. On behalf of the respondents the facts of any such speeches having been made is vehemently denied and the parties have adduced evidence in this conection. From this evidence it is proved to our satisfaction that in his speech at this function Sri C. B. Gupta did say that the eye relief camp was a debt incurred by the people which they could only repay by voting for the Congress candidates. This part of Sri C. B. Gupta's speech is borne out by the reports of the function that appeared in the daily newspapers of Lucknow on 28th December, 1951. The report in the Pioneer is Ex.P1 and it has been proved by P.W. 2 Sri Vidya Sagar, Staff Reporter of the Pioneer, who attended the function as the representative of the Pioneer. The report in the Nav Jeewan is Ex. P104 and it has been proved by P.W. 37 Sri Mandakni Prasad Saxena, Staff Reporter of Nav Jeewan, present at the function. Sri C. B. Gupta was also the Treasurer of the U.P. Parliamentary Board of the Congress that set up the respondents No. 1 and 2 in the election and he was taking an active part in the election campaign of the respondents in as much as he addressed their election meetings at Barawan Kalan, Parauni and Kakori, and perhaps in his zeal for the respondents No. 1 and 2 and Srimati Pandit he forgot the nature of the Karori function of 27th December, 1951, and indiscreetly referred to the election and appealed for the Congress candidates in his speech, and it would have been better that he had not done so. The petitioner himself, who is P.W. 55 in this case, was not present in the function of 27th December, 1951, and he came to know of its proceedings on 28th December, 1951 only and then he sent a strong letter of protest about it the same day to the Chief Electoral Officer, U.P., and its copies to the Election Commission, New Delhi, and the District Magistrate,

the Civil Surgeon, the Sub-Divisional Magistrate and the Superintendent of Police, Lucknow. He released a copy to the Press also, and it found a mention in the daily newspapers of Lucknow of 29th December 1951. But there was no contradiction by or on behalf of any official or non-official of what Sri C. B. Gupta was reported to have said in his speech at Kakori on 27th December, 1951, and the District Officers did not even care to acknowledge his letter, which is Ex.P162 and Ex.P210 in this case only the Election Commission acknowledged it by means of its letter Ex. P163. In the face of this strong documentary evidence the case of the respondents that Sri C. B. Gupta did not say any such thing cannot be accepted, and furthermore in the circumstances of the case Sri C. B. Gupta must be held to be an agent of the respondents No. 1 and 2 as defined in Section 79(a) of the Representation of the People Act, 1951.

14. However, the question is as to whether any corrupt practice mentioned in Section 123(8) of the Act was committed by Sri C. B. Gupta or by anybody else on account of Sri C. B. Gupta having made such an appeal at Kakori on 27th December, 1951. There is nothing on the record to show that Sri C. B. Gupta made the appeal after any premeditation and not at the spur of the moment, or that anybody know before-hand that he would make such an appeal; perhaps the District Magistrate who was presiding over the function was weak in not rising up to the occasion and telling Sri C. B. Gupta plainly not to make any reference to the election at the function which was a public function and not a Congress function and was attended by the officials also. But at the same time it must be kept in view that the appeal was to the public only and not to the officials and there was no suggestion or hint that the officials also should help the Congress in the election. The fault of Sri Gupta was only that he utilized such an occasion for making up an appeal for votes for the respondents No. 1 and 2 in whom he was interested, but in our view it did not amount to obtaining or procuring or even attempting to obtain or procure the assistance of any person serving under the Government in furtherance of the prospects of the election of the respondents No. 1 and 2. This disposes of the two Kakori functions.

15. Then there is the question of the Mukhias or village headmen introduced by the amendment application of 27th February, 1953, which was allowed by the Tribunal on 28th November, 1953. In this application it was alleged that in their election the respondents No. 1 and 2 took the help of eleven Mukhias or headmen who issued an appeal and worked for them and became their polling agents. In respect of six of them *viz.* Mohd. Ismail, Lakshmi Narayan, Sabit Ali, Sita Ram, Hashmat Ali and Murari Lal it was alleged that they became the polling agents; in respect of four *viz.* Mansa Din, Arjun Singh, Shambhu Ratan and Gaya Din it was alleged that they were signatories to the appeal Ex.P15 and about one *viz.* Pancham Singh it was alleged that he became the polling agent and also signed the appeal; no particulars of any other work that might have been done by any of these persons in furtherance of the prospects of the election of the respondents No. 1 and 2 were given. The respondents No. 1 and 2 contested the amendment application on legal grounds only contending that such an amendment could not be made in the petition but never questioned the truth of the allegations contained in this application. When the amendment was allowed on 28th November, 1953 the respondents were given an opportunity to file their written statements, if any, as regards the amendment but they never chose to file any written statement or to disclose their case; against the order allowing the amendment they went up to the Hon'ble High Court by means of a writ petition and got the proceedings of the Tribunal stayed; the stay order was vacated by the High Court on 16th August, 1954, and thereafter the respondents No. 1 and 2 were again given an opportunity to file a written statement and disclose their case on this subject but they did not choose to do so even now; on 1st September, 1954, the Tribunal was prepared to allow them some more time to file a written statement on payment of Rs. 25 as costs but they refused to avail of this opportunity by paying the costs with the result that hearing of the petitioner's evidence started in this case on 7th September, 1954 in the absence of any pleadings of the respondents No. 1 and 2 on this point.

16. The petitioner adduced no evidence in respect of Lachhmi Narain Mukhia of Barauna, and his case was given up at the time of arguments. In respect of Mohd. Ismail, Sabit Ali, Sita Ram, Hashmat Ali and Murari Lal evidence was adduced by the petitioner to show that they were the headmen of villages Dona, Sadrauna, Mati, Behsa and Bhatgawan respectively and they worked as the polling agents of the respondent No. 1 at Tej Krishna Khera, Amausi, Mati Amausi and Narayanpur polling stations respectively; about Murari Lal the petitioner wanted to prove that he also joined in issuing the appeal Ex.P15 but

the Tribunal stopped the petitioner from proving this thing as this thing had not been alleged in the amendment application. As regards Mansa Din, Arjun Singh, Shambhu Ratan and Gaya Din the petitioner adduced evidence to show that they were the headmen of villages Rahimnagar Pariana, Phalenda, Beti and Mawai Pariana respectively and they issued the appeal Ex.P15. In respect of Pancham Singh he adduced evidence to show that he was the headman of village Khatola who worked as the polling agent of the respondent No. 1 at the Chandrawal polling station and also issued the appeal Ex.P15. The petitioner further wanted to lead evidence to show that these headmen did other work also for the respondents No. 1 and 2 in furtherance of the prospects of their election but the Tribunal stopped him from leading such evidence on the ground that no particulars of any such work had been given in the amendment application.

17. The respondent No. 1 adduced evidence to show that he did not appoint any Mukhia or village headman as his polling agent, that in fact no Mukhia worked as his polling agent and that no Mukhia joined in issuing the appeal Ex. P15. For some time there was a controversy as to whether the Mukhias or village headmen of the State of Uttar Pradesh are persons serving under the Government within the meaning of Section 123 (8) and its explanation (a) of the Representation of the People Act, 1951, but the controversy has been set at rest by a recent pronouncement of the Hon'ble Supreme Court of India to the effect that they are such persons. In another case the Hon'ble Supreme Court has held that there is no legal bar to the appointment of a Mukhia or village headman of U.P., or in fact any person serving under the Government as a polling agent and no legal bar to his acting as such provided he confines himself to only such functions in connection with the poll as are authorised by or under the Representation of the People Act, 1951, to be performed by a polling agent and does not do any thing in furtherance of the prospects of the election of the candidate appointing him, as the performance of such functions is not deemed to be of any assistance in furtherance of the prospects of the election of a candidate. Consequently, even if Mohd. Ismail, Sabit Ali, Sita Ram, Hashmat Ali and Murari Lal Mukhias were appointed by the respondent No. 1 as his polling agents and they worked as such, it cannot amount to a corrupt practice within the meaning of Section 123(8) of the Act in the absence of any evidence to show that they rendered any assistance in the furtherance of the prospects of the election of the respondents.

18. Now we take up the case of the appeal Ex.P15 and of the five Mukhias Pancham Singh, Mansa Din, Arjun Singh, Shambhu Ratan and Gaya Din having issued it. According to the petitioner this Pancham Singh Mukhia of village Khatola was also appointed by the respondent No. 1 as his polling agent for the Chandrawal polling station by means of the polling agency form Ex.P207 and he worked as such. The petitioner has examined one Hira Lal as P.W. 58 to say that he is acquainted with the signatures of Pancham Singh of Khatola and that the signature purporting to be of the polling agent on the form Ex.P207 are, in his opinion, of this Pancham Singh and he had also examined one Mohd. Abdul Zahir as P.W. 21 to say that this Pancham Singh actually worked as the respondents' polling agent at Chandrawal polling station. On the other hand, the respondent has examined this Pancham Singh of Khatola as R.W. 22 to say that he did not sign the form Ex.P207 nor did he work as a polling agent; also he has examined one Pancham Singh of Bhagwant Khera as R.W. 11 to say that it was he himself who signed Ex.P207 and worked as the polling agent at Chandrawal; the respondent has examined some other witnesses also to say that the polling agent of the respondent No. 1 at Chandrawal polling station was Pancham Singh of Bhagwant Khera R.W 11 and not Pancham Singht Mukhia of Khatola R.W. 22. In these circumstances we find ourselves unable to hold that Pancham Singh Mukhia of Khatola was the polling agent of the respondent No. 1 in this election. Even if this Pancham Singh of Khatola was the polling agent it would be immaterial for the purposes of this case in view of what has been said above in respect of Mohd. Isamail, Sabit Ali, Sita Ram, Hashmat Ali and Murari Lal Mukhias.

19. The real question is as to whether Pancham Singh Mukhia of Khatola, Mansa Din Mukhia of Rahimnagar Pariana, Arjun Singh Mukhia of Phalenda, Shambhu Ratan Mukhia of Beti and Gaya Din Mukhia of Mawai Pariana or any of them issued the appeal Ex. P15, as that would be real assistance in furtherance of the prospects of the election of the respondents No. 1 and 2 and as such a corrupt practice under Section 123(8). Ex. P15 is a Hindi leaflet printed at (Raja) Ram Kumar Press of Lucknow over 56 names; it is entitled "Lucknow Tahsil ki janta se appeal" and is an appeal for votes for the respondents No. 1 and 2 and Srimati Pandit in this election. The names of Mansa Din

of Rahimnagar Pariana, Arjun Singh of Phalenda, Shambhu Ratan of Beti and Gaya Din of Mawai Pariana appear at the foot of this leaflet at serial numbers 31, 16, 10 and 12 respectively without the appellation of Mukhia but with the names of villages alright; in the case of Arjun Singh the name of the village as given in Ex. P15 is Pathela, but it is not disputed by the respondents that it is only another name of Phalenda and in the case of Gaya Din the name of the village in Ex. P15 is Mawai which is admittedly a shorter form of Mawai Pariana. According to the petitioner's case Mansa Din, Arjun Singh, Shambhu Ratan and Gaya Din named in Ex. P15 are the Mukhias of their villages, but according to the respondents these persons are different from the Mukhias of these names. One Pancham Singh Yadav is named in Ex. P15 at serial No. 49 with the name of the village as Khayela, and according to the petitioner he is Pancham Singh Mukhia of Khatola R.W. 22 who is in fact a Yadav while Khayela is only a misprint for Khatola, but according to the respondents he is only one Pancham Singh Yadav of village Ghayela, Khayela in Ex. P15 being a misprint for Ghayela, and this Pancham Singh is entirely different from Pancham Singh Mukhia of Khatola R.W. 22.

20. According to the common case of the parties the manuscript draft of Ex. P15 with the signatures of the 56 persons on it was handed over at the Raja Ram Kumar Press, Lucknow, for printing, but Sri Tribhuwan Nath Dhir, Assistant Manager of this Press, examined by the petitioner as P.W. 39 says that it is no longer traceable in the Press and the result is that this draft is not available for the examination and proof as to whether the signatures of Pancham Singh, Mansa Din, Arjun Singh, Shambhu Ratan and Gaya Din on the draft were made by the Mukhias of these names or only by any other persons of those names. Also the petitioner has not been able to produce any evidence to show that any body saw these Mukhias or any of them signing the draft. The only evidence adduced by the petitioner on this point is that Mansa Din, Arjun Singh, Shambhu Ratan and Gaya Din Mukhias admitted to the petitioner's witnesses about their having issued such an appeal; even this evidence is wanting in the case of Pancham Singh Mukhia of Khatola; the petitioner's solitary witness connecting Pancham Sigh Mukhia of Khatola with Ex. P15 is Ram Autar Sigh P.W. 29, but even he does not state that Pancham Singh made any such admission to him. On the other hand Pancham Singh Mukhia himself, examined by the respondents as R.W. 22, denies having issued Ex. P15 or having signed its draft. Munnu Lal R.W. 46 who claims to have obtained the signatures on the draft says that Pancham Singh Yadav who signed the draft was of village Ghayela and different from Pancham Singh Mukhia of Khatola. No Pancham Singh of Ghayela has been examined by the respondents, but it was for the petitioner himself to prove by satisfactory evidence that Pancham Singh named at serial No. 49 in Ex. P15 is really Pancham Singh Mukhia of Khatola and not any other Pancham Singh. This the petitioner has not succeeded in doing, and this disposes of the case in respect of Pancham Singh Mukhia of Khatola.

21. The evidence adduced by the petitioner to prove that Mansa Din, Arjun Singh, Shambhu Ratan and Gaya Din Mukhias issued the appeal Ex. P15 comprises of the testimony of P.W. 33 Balram Singh P.W. 34 Gopi Nath; P.W. 35 Nageshwar Singh and P.W. 40 Sukhdeo Singh, Balram Singh says that 2 or 3 days before the polling Mansa Din Mukhia of Rahimnagar Pariana told him about the appeal Ex. P15 that he had issued it. Similarly Gopi Nath says that 5 or 6 days before the polling Gaya Din Mukhia of Mawai Pariana told him about this appeal that he had issued it; he adds that he had a talk also with Arjun Singh Mukhia of Pathaila about this leaflet but does not say what this talk was nor does he say that Arjun Singh made any admission of having issued it Nageshwar Singh says that 6 or 7 days before the polling Arjun Singh Mukhia of Pathaila gave him a copy of Ex. P15; he adds that he had also a talk with Gaya Din Mukhia of Mawai Pariana about this leaflet but does not say what the nature of the talk was. Sukhdeo Singh says that Shambhu Ratan Mukhia of Beti gave him a copy of Ex. P15 saying that he and others had issued it. Also Puttu Lal P.W 11 says that Mansa Din of Rahimnagar Pariana and Shambhu Ratan of Beti named in Ex. P15 are the Mukhias but gives no reason for saying so nor does he prove any admission of these Mukhias about Ex. P15. We have given the matter our best consideration and we see no good reason to disbelieve Balram Singh when he says that Mansa Din Mukhia admitted to him having issued the appeal Ex. P15, or Gopi Nath when he says that Gaya Din Mukhia made such an admission to him, or Nageshwar Singh when he says that Arjun Singh Mukhia actually gave him a copy of the appeal, or Sukhdeo Singh when he says that Shambhu Ratan gave him a copy of Ex. P15 and admitted that he had issued it; and the implication is that after issuing the appeal Ex. P15 these Mukhias were giving publicity to it to persuade the people to vote for the respondents No. 1 and 2.

22. This evidence of the petitioner by itself and in the ordinary circumstances would perhaps have been rather insufficient to prove satisfactorily that these Mukhias had issued the appeal Ex. P15, but the circumstances of this case are somewhat extraordinary and also the conduct of the respondents in this trial has not been quite frank and candid in as much as they did not disclose their case until a very late stage and further their evidence to the contrary is of a very poor standard, and so the petition's evidence in the full context of the case is quite sufficient to prove that those Mukhias did issue the appeal Ex. P15. The case of the respondents as now disclosed is that these Mukhias worked in the election for Zamindar Party also known as the Praja Party which had set up its own candidates in opposition to the Congress candidates, and so they could not have issued the appeal Ex. P15 and did not in fact issue it, nor did they make any admissions about it, that in the election days in these villages there were other persons also of these very names different from the Mukhias and that it was those other persons only that signed the draft of Ex. P15. But as already mentioned the respondents never filed any written statement giving out this case of theirs, and although in the cross-examination of the petitioner's witnesses there was a suggestion that these Mukhias worked for the Zamindar Party in the election, yet there was no suggestion at all that in these villages there were other persons also of these names who might have signed the draft and this part of their case came to be disclosed in their evidence only, and it was only at the fag end of their evidence when on 4th December, 1954 they examined Surajpal Singh and Munnu Lal as R.W's. 45 and 46 that it was given out on their behalf that the draft had been signed by those other persons only and not by the Mukhias. In fact in the early stages of their evidence their attempt appears to have been to deny altogether the existence of Ex. P15 and their knowledge of it, but when later on it was realized that the existence of Ex. P15 and their knowledge of it could not be denied so easily, then the theory was invented that in the election days in these villages there were other persons also of these very names different from the Mukhias and that it was those other persons only that signed the draft of Ex. P15. The contention of the petitioner is that there were no other persons of these names in these villages and his grievance is that because of the failure of the respondents to disclose their case on this point until a very late stage he has been deprived of the opportunity to adduce evidence to prove that there were no such other persons; his contention further is that even according to the respondents' evidence the existence of any such persons is very doubtful, that in any case those other persons have not been shown to be men of any status or influence who might be expected to have issued the appeal Ex. P15 and that according to the respondent's evidence itself those other persons, if any, were mere non entities whereas the Mukhias of these names are men of influence and position and so it is very probable that Gaya Din, Mansa Din, Shambhu Ratan and Arjun Singh who issued the appeal Ex. P15 were the Mukhias as is the case of the petitioner rather than any other persons of these names as is the case of the respondents, while it is immaterial that in Ex. P15 these Mukhias were not described as such, and this omission must have been made with the purpose concealing the fact of the corrupt practice by not making it apparent on the face of Ex. P15 itself. We now proceed to examine the respondents' evidence on this subject.

23. As regards Arjun Singh, we have Arjun Singh Mukhia himself as R.W. 20 who says that he did not sign any draft of Ex. P15 and that in the election he was a worker of the Zamindar Party; however, there is nothing remarkable in his saying so; he is a partizan of the respondents No. 1 and 2 through and through, in the election days he supported them by issuing the appeal Ex. P15, it is but natural and consistent on his part to help them now in the trial of the election petition by saying that he did not issue the appeal, because by admitting his issuing the appeal he would be doing a positive dis-service to them and would be the cause of their being unseated and disqualified. He adds that in the election days there was another Arjun Singh also at Phalenda and he was son of Datti Singh *alias* Deo Datt and he left Phalenda for Piparsan about two years and a half back *viz.*, about six months after the election. He admits that he acquired all the zamindari and cultivation of this other Arjun Singh by pre-emption some 10 years back after which this other Arjun Singh became reduced to the status of a mere labourer. The contention of the petitioner is that after disposing of all his zamindari and cultivation of Phalenda some ten years back this other Arjun Singh had no cause to continue at Phalenda and so he shifted to Piparsan some 10 years back and was living there in the election days and not at all living at Phalenda, and his grievance is that because the respondents did not disclose this part of their case before they examined Arjun Singh Mukhia he had no opportunity to prove by his own evidence that in the election days this other Arjun Singh was on the rolls of village Piparsan only at serial No. 184 and not at all on the rolls of village Phalenda, which show:

that in the election days he was living at Piparsan only and not at Phalenda. Further, if this other Arjun Singh was only a labourer, nobody would care to obtain his support to an appeal in favour of the Congress candidates, and we are satisfied that Arjun Singh of Pathaila at serial No. 16 in Ex. P15 is Arjun Singh Mukhia rather than this other Arjun Singh. Rameshwar Singh R.W. 36 says only that Arjun Singh Mukhia of Phalenda was a worker of the Zamindar Party in the election, but on this point he is contradicted by Nageshwar Singh P.W. 35, Munnu Lal Duvedi of Maunda R.W. 46, who claims to have obtained the various signatures on the draft of Ex. P15, says that Arjun Singh, whose signatures he obtained, was not the Mukhia but the other Arjun Singh; however, he was examined at a very late stage to say so and also there is no corroboration of his testimony that Arjun Singh whose signatures were obtained was other than the Mukhia. R.W. 53 Sri Sanghar Singh is a legal practitioner of Lucknow who says that Arjun Singh Mukhia was a worker of the Zamindar Party in the election but not much reliance can be placed upon his testimony in view of the fact that he himself was an ardent supporter of the respondents No. 1 and 2 in the election and so was his brother Thakur Sheoraj Singh Chauhan Advocate, Lucknow, whose name appears at serial No. 1 in Ex. P15. The appeal Ex. P15 was issued by eminent persons like Thakur Sheoraj Singh Chauhan Advocate and it is only reasonable and probable that Arjun Singh who joined in it was the Mukhia of his village and not a mere labourer.

24. As regards Mansa Din, we have the testimony of Mansa Din Mukhia himself who has come forward as R.W. 29 and he says that in the election he worked for the Zamindar Party and not for the Congress and did not issue the appeal Ex. P15. He adds that in the election days there was another Mansa Din also at Rahimnagar Pariana and he was an outsider who had come to Rahimnagar Pariana for about a month to work for the Congress in the election and who went away after the election; Mansa Din Mukhia does not know to what village this other Mansa Din belonged and he never had any talk with him; Mansa Din Mukhia says that this other Mansa Din used to sell Khaddar also in addition to doing election work and he saw him going about in Rahimnagar Pariana with a bundle of cloth on his shoulders and a yard measure in his hand and a sweepress told him his name; according to Mansa Din Mukhia there was no third person of the name of Mansa Din at Rahimnagar Pariana. Surajpal Singh R.W. 45 says that on the draft of Ex. P15 he along with Munnu Lal R.W. 46 obtained the signatures of this other Mansa Din only and not of the Mukhia; but he gives an altogether different description of this other Mansa Din; he says that this other Mansa Din had been living in Rahimnagar Pariana for a year or a year and a half before the election and after the election also he lived in Rahimnagar Pariana for some two years and a half *viz.*, upto six months back; he used to sell ready made garments, and he does not know his father's name or his present whereabouts. Munnu Lal R.W. 46 who says that the signatures of the other Mansa Din only were obtained on the draft of Ex. P15 admits that he does not know his father's name and about his occupation he says only that perhaps he used to sell cloth. In view of this unsatisfactory and conflicting evidence of the respondents the fact of the existence of any other Mansa Din at Rahimnagar Pariana in the election days becomes very doubtful and in any case this other Mansa Din, if any, does not appear to have been a person important enough to be requested to join in the appeal Ex. P15 and it is only reasonable and probable that Mansa Din who joined in it was Mansa Din Mukhia who because of his position and influence could very well be expected to join hands with important persons like Thakur Sheoraj Singh Chauhan Advocate in issuing the appeal Ex. P15.

25. As regards Gaya Din, we have Gaya Din Mukhia himself as R.W. 19 who is a Brahmin and who says that in the election days he worked for the Zamindar Party and not for the Congress and that he did not issue the appeal Ex. P15. He adds that there is another Gaya Din also in his village who is an Ahir and in the election days he worked for the Congress; he does not know the name of this other Gaya Din's father and about his occupation he says that he is a labourer and also keeps two cows and lives by selling their milk. This other Gaya Din has not been examined by the respondents and the petitioner contends that there is no such person at Mawai Pariana. Badri Prasad R. W. 23 also professes to know this other Gaya Din and says that in addition to being a labourer he is a petty cultivator also, but does not know if in the election this other Gaya Din worked for any party or candidate, nor is he sure of his being of the Ahir community. Munnu Lal Duvedi R.W. 46 says that on the draft of Ex. P15 he obtained the signatures of this other Gaya Din only and not of the Mukhia; however, he does not know his father's name and about his occupation he says that he sells milk; he saw him even 5 or 6 months back but does not

know if he is still at Mawai Pariana. No explanation has been given by the respondents for their not having examined this other Gaya Din, in view of their unsatisfactory evidence about his existence we are very doubtful if there was or is really any such person at Mawai Pariana. In any case this other Gaya Din, if any does not appear to be important enough to have been joined in the appeal Ex. P15 and it is only reasonable and probable that Gaya Din of Mawai Pariana who joined in the appeal was Gaya Din Mukhia and no other Gaya Din.

26. As regards Shambhu Ratan, we have Shambhu Ratan Mukhia himself as R.W. 25, who also like Arjun Singh, Mansa Din and Gaya Din denies his having joined in the appeal Ex. P15 and having signed its draft, but unlike them he admits having worked and canvassed for the Congress in the election and having come across a copy of Ex. P15 in the election days. He admits further that when his son showed him this copy of Ex. P15 and pointed out to him his name in it he did not protest to anybody against the inclusion of his name in it without his consent. On their request the respondents were allowed to cross-examine this Shambhu Ratan Mukhia but nothing useful to them was brought out in this cross-examination. In fact not only he but his son Ganesh Shankar also worked for the Congress in the election and on the polling day this Ganesh Shankar was the polling agent of the respondent No. 1, his polling agency form being Ex. P217. After examining Shambhu Ratan Mukhia the respondents examined Mansa Din R.W. 29, Rameshwar Singh R.W. 36 and Lalta Prashad R.W. 39 to say that in the election Shambhu Ratan Mukhia worked for the zamindar party but they did not make any such suggestion in their cross-examination of Shambhu Ratan Mukhia. Similarly they examined Surajpal Singh R.W. 45 and Munnu Lal Duvedi R.W. 46 to say that at Beti there was another Shambhu Ratan also whose signatures were obtained on the draft of Ex. P15 but in their cross-examination of Shambhu Ratan Mukhia there was no suggestion at all that there was any other Shambhu Ratan also. This other Shambhu Ratan has not been examined by the respondents and their witness Munnu Lal R.W. 46 says that he has heard that he is now dead, whereas the contention of the petitioner is that at Beti there was no Shambhu Ratan at all other than the Mukhia and on his behalf we have been referred to the electoral rolls of Beti which contain the name of only one Shambhu Ratan and he is Shambhu Ratan Mukhia. Surajpal Singh R.W. 45 says that this other Shambhu Ratan lived at Beti for a year or a year and a half before the election and had a house and some cultivation there, but he does not know if at Beti he lived alone or had also any other members in his family. Munnu Lal Duvedi R.W. 46 either does not know the name of his father, nor does he know if he had any occupation at Beti, and in these circumstances it is difficult for us to believe that there was also any other Shambhu Ratan at Beti in addition to the Mukhia. Shambhu Ratan Mukhia says that in the election he worked and canvassed for the Congress at the request of Mahipal Singh and Sunder Lal who were admittedly Congress workers in the election and this Mahipal Singh is R.W. 31 in the case. If Shambhu Ratan Mukhia worked a canvassed for the Congress, it is very probable that he joined in the appeal Ex P15 also as is the petitioner's case and we are unable to believe the respondents' case to the contrary.

27. Arju Singh, Mansa Din, Gaya Din and Shambhu Ratan Mukhias were admittedly very substantial zamindars in the election days and must have commanded great influence over their tenants in addition to their influence as Mukhias and we have, therefore, no doubt in our mind that they and not any other non-descript persons of these names, whose very existence is doubtful, were made to join in the appeal Ex. P15 to make it effective. In the appeal Ex. P15 the leading name is that of Thakur Sheoraj Singh Chauhan Advocate and it is not to be expected that his asociates in the appeal were unimportant persons like those set up by the respondents for the purposes of this case.

28. We are not much influenced by the statements of Arjun Singh, Mansa Din and Gaya Din Mukhias R.W.'s 20, 29 and 19 that they did not sign the draft of Ex. P15 or that they did not give publicity to any such appeal or that they did not even know about such an appeal in the election days. Their denial of their knowledge of and connection with Ex. P15 is only in consonance and conformity with a concerted attempt on the part of the respondents in the earlier stage of their evidence to get rid of Ex. P15 by such a denial Accordingly we find that not only these Mukhias but also four other R.W.'s viz., Shivpal Singh Yadav R.W. 4, Jagannath Prasad R.W. 9, Brij Lal R.W. 34 and Ram Din R.W. 37 whose names with the names of their villages appear at serial numbers 46, 23, 50 and 51 in Ex. P15, deny any knowledge of and connection with Ex. P15. Shivpal Singh now lives at Kurauni but he admits that in the election days he lived at Kasim Khera, a hamlet of Kuraruni, and so in Ex. P15 we find the name of his village to be Kasim Khera; Jagannath Prasad is of village Janabganj and in Ex. P15

his village is given as Nawabganj but this appear to be a case of misprint only as there is reason to believe that in this constituency there is no village of the name of Nawabganj as stated by Jagannath Prasad himself; Ram Din gives his residence as Anup Khera, hamlet of Mati, and it is immaterial that in Ex. P15 his residence is given as village Mati itself. These denials gave the impression that on behalf of the respondents there was an absolute denial of any existence of Ex. P15 and of their knowledge of it, and this impression was removed for the first time towards the close of their evidence only when their witness Surajpal Singh R.W. 45 came into the witness box to admit that he himself signed the draft of Ex. P15 at serial No. 6 and also obtained a few other signatures on it and when their witness Munnu Lal Duvedi R.W. 46 came into the witness box to admit that he himself obtained all the various signatures on the draft of Ex. P15 and handed over the draft at the Press for printing. However, we have nothing on the record to show who were Shivpal Singh Yadav, Jagannath Prasad, Brij Lal Yadav and Ram Din Singh named at Serial Nos. 46, 23, 50 and 51 in Ex. P15, if they were not the respondents' witnesses No. 4, 9, 34 and 37. Surajpal Singh R.W. 45 says that on the draft the signatures of one Gur Charan Lal of Beti were also obtained, but we do not find the name of any such person in Ex. P15, and in view of all that has been said above we find that Arjun Singh, Gaya Din, Mansa Din and Shambhu Ratan Mukhias issued the appeal Ex. P15; they must have signed the draft of Ex. P15 and as proved by the petitioner's evidence they gave publicity to it by telling the residents of the constituency about it and by distributing printed copies of it.

29. Next we come to the connection of respondents No. 1 and 2 with Ex. P15 and their responsibility for it. As already stated the respondents have not filed any written statement as regards this part of the case; the respondent No. 1 has adduced oral evidence and he himself is the last witness R.W. 55; the respondent No. 2 has not come into the witness box nor has he examined any other witnesses and he simply relies upon the evidence adduced by the respondent No. 1. The admitted facts are that the election work of the respondents No. 1 and 2 was joint and most of the election work of Srimati Pandit was also joint with them. The appeal Ex. P15 was for the benefit of all the three of them and asked for votes for all the three from the public of the Lucknow tehsil. The printing charges of this leaflet along with the printing charges of some other election literature were divided almost equally between the three candidates and the respondent No. 1 included his share of these charges in his return of election expenses and also attached a copy of Ex. P15 to his return, and similarly the respondent No. 1 included his share of these charges in his return of election expenses. Now that the election of the respondents No. 1 and 2 is being questioned they want to use the name of Srimati Pandit as a safety-valve and have set up the case that this appeal was got prepared, signed and printed by the workers of Srimati Pandit only without the knowledge of the respondents No. 1 and 2 and their workers, that the printed copies were not put into circulation at all and that they came to know of this appeal after the election only when they prepared their returns of election expenses. But they disclosed this case of theirs at a very late stage *viz.*, when they examined Munnu Lal Duvedi of Maunda as their witness No. 46 and not earlier. In fact as already stated their attempt upto that stage had been to try to get rid of Ex. P15 by denying its very existence and their knowledge of it. The order to the Press for the printing of this leaflet and some other literature is Ex. P128 dated 10th January 1952 and is over the signatures of Sri Harish Chandra Bajpai himself respondent No. 1 and yet because his address as shown on this order is Ganesh Ganj, Lucknow, while actually he did not live in Ganesh Ganj those days but lived in the Councillors' Residence, and another person named Harish Chandra Bajpai lived in Ganesh Ganj, advantage was taken of this situation and Munnu Lal Duvedi was made to state that this other H. C Bajpai was the separate worker of Srimati Pandit and that it was really he who went to the Press to place the order. This other H. C. Bajpai was included by the respondents in their list of witnesses but was never examined and no explanation has been given for keeping him back; in fact when the petitioner pressed hard for his examination the respondents gave him up altogether. Thereafter Sri H. C. Bajpai respondent No. 1 himself came into the witness box as R.W. 55 and had to admit his signatures on the order Ex. P128, but he added that his general instructions to the Press were that if the other H. C. Bajpai or any other worker of Srimati Pandit wanted any election literature to be printed the Press should print it and recover the charges from the respondent No. 1; the implication was that it was in these circumstances that the other H. C. Bajpai placed the order for the printing of Ex. P15 without the knowledge of the respondent No. 1; he added also that at the time of signing Ex. P128 he did not know at all what this order was about or that it included any leaflet like Ex. P15 also, and on his behalf it was advanced as a plausible

explanation in view of the fact that the order Ex. P128 does not clearly show on the fact of it that it includes Ex. P15 also, but at the same time there is certainly the press note on the order that it relates to the docket No. B68 also and this note connects it with Ex. P15 as stated by Sri T. N. Dhir, Assistant Manager of the Press, P.W. 39. The respondent No. 1 made one payment to the Press for the printing charges on 14th January 1952 and another on 19th January 1952 and it was in these circumstances that the printing charges were divided almost equally betwen the respondent No. 1, respondent No. 2 and Srimati Pandit and then the respondent No.1 included his share of the charges in his return of election expenses and similarly the respondent No. 2 included his own share in his return. According to the respondent No. 1, his witness R.W. 46 Munnu Lal Duvedi of Maunda also was the separate worker of Srimati Pandit and at the time of the preparation of his return of election expenses the respondent No. 1 enquired from Munnu Lal through Bhuinyan Din R.W. 52 about Ex. P15 and then Munnu Lal Duvedi gave information about the printing of Ex. P15 and then only the respondent No. 1 came to know the circumstances under which it had been got printed. However, the respondent No. 1 does not state clearly and definitely when or how he came to know for the first time about the existence of Ex. P15, and we think that he knew about Ex. P15 from the very beginning when its draft was prepared and when the various signatures were obtained upon it, specially because the appeal was for his benefit also and the order for its printing was signed by him. The election work of all the three Congress candidates was joint and we do not believe that Munnu Lal R.W. 46, who takes upon himself the responsibility for having prepared the draft, for having obtained the signatures on the draft and for having arranged for the printing of the appeal, was the separate worker of Srimati Pandit and was not the worker of the respondents No. 1 and 2 also; if he were the separate worker of Srimati Pandit he would not have prepared the appeal for the benefit of the respondents No. 1 and 2 as well nor would the respondent No. 1 have instructed the Press to print any election literature desired by Munnu Lal and to recover the costs of printing from himself (respondent No. 1). Munnu Lal says that upto the date of his examination in Court he never gave any information of Ex. P15 to the respondents No. 1 and 2, and he does not depose about his having given them any information through Bhuinyan Din either This Bhuinyan Din R.W. 52 claims to have been a worker of all the three Congress candidates in the election and says that about a week before the polling Munnu Lal showed him a copy of Ex. P15 and told him about its printing but adds that he kept this information to himself at that time and gave it to the respondent No. 1 only at the time of the preparation of the return of election expenses when the respondent No. 1 questioned him specially about it with reference to a copy of it which the respondent No. 1 had already with him. In these circumstances our finding is that the respondents No. 1 and 2 knew about Ex P15 from the very beginning that they themselves got this appeal issued by the village headmen and others in furtherance of the prospects of their election and that they are now using the name of Srimati Pandit as a safety valve only and have invented all sorts of explanations in this connection to escape from the consequences after having ordered its printing, having paid its cost of printing and having included this cost in their returns of election expenses.

30. Another contention of the respondents is that the printed copies of Ex. P15 were not put into circulation but remained lying unused because of an objection from Srimati Pandit and her worker Sri Tankha about the propriety of such circulation and that the petitioner did not allege any circulation of Ex. P15 in his amendment application nor did he give any particulars of it and so his evidence on the point of circulation should be ignored and it should be held that there has been no circulation of Ex. P15 and, therefore, no corrupt practice of Section 123(8) has been proved The common case of the parties is that printed copies of Ex. P15 were delivered by the Press to Kumari S. Tangri, a daughter of the General Manager of the Press, because the instructions of the person placing the order were that the delivery should be made to Sri H. C. Bajpai C/o the General Manager and according to the Press papers this delivery was made on 16th January, 1952 According to the case of the petitioner the printed copies of Ex. P15 were put into circulation and were found at various places in the constituency in the election days and the petitioner's witnesses on this point are Puttu Lal P.W. 11, Burga Bux Singh P.W. 20, Rati Ram P.W. 26, Ram Autar Singh P.W. 29, Balram Singh P.W. 33, Gopi Nath P.W. 34, Nageshwar Singh P.W. 35, Sukhdeo Singh P.W. 40 and Kamla Kant Pandey P.W. 44, and there is also Shambhu Ratan Mukhia himself R.W. 25 on this point. As against this evidence there is the solitary testimony of Munnu Lal R.W. 46 who says that Srimati Pandit and Sri Tankha objected to the printed

copies being distributed and so they remained lying unused; not only is there no corroboration of the statement of Munnu Lal on this point, but also it does not stand to reason that after getting the appeal prepared and printed for their benefit the Congress candidates allowed the copies to remain unused, and we believe the petitioner's evidence that they were duly put into circulation and used for the purposes of the election propaganda of the Congress candidates. As to the respondents' contention that in the amendment application there is no allegation of circulation, we are unable to accept this contention as the amendment application says alright that the Mukhias issued the appeal and that the respondents no. 1 and 2 got it issued and in our opinion the act of issuing includes the act of circulation also. Further, we are unable to accept the respondents' contention that any particulars of circulation which should have been given by the petitioner were not given by him in his amendment application. The appeal was meant for the whole constituency and was to be used in the election days and the petitioner must be deemed to have alleged in his amendment application that the circulation was throughout the whole constituency and in the election days. In fact the respondents themselves got the appeal printed and included its cost in the returns of their election expenses and the natural inference would be that it was used for the purpose for which it was got prepared *viz.* its circulation in the constituency in the election days for election propaganda, and if it was the case of the respondents that it was not so used they should have disclosed this case in the very beginning and should have supported it by satisfactory evidence. Rather than doing so they kept their case undisclosed until they examined Munnu Lal as their witness no. 46 and then they supported it only by the solitary testimony of Munnu Lal when corroboration of his testimony was possible. In view of what has been said above we find that the respondents no. 1 and 2 obtained assistance from Arjun Singh, Gaya Din, Mansa Din and Shambhu Ratan Mukhias or village headmen for furtherance of the prospects of their election by getting them issue the appeal Ex. P15 and thereby they committed the major corrupt practice as defined in Section 123(8) of the Representation of the People Act, 1951. In this connection our attention has been invited on behalf of the respondents to the provisions of Section 100(3) of the Act also, but in our opinion these provisions are not applicable at all to the facts of this case in as much as the corrupt practice was committed by the candidates themselves and not by any agents and there can be no question of its having been committed contrary to their orders or without their sanction or connivance or of their having taken any means for preventing its commission, and this disposes of para 7C of the petition together with its amendment.

31. Now we come to para 7E of the petition which says that on the polling day the respondent no. 1 visited the Bahroo polling station where he parked his car within a distance of 100 yards from the polling station and canvassed support for the respondents no. 1 and 2 by shouting slogans of Mahatma Gandhi ki jai and appealing in his name; also the Presiding Officer took the respondent no. 1 into the polling booths and allowed him there to talk with the polling officers and voters; this assistance by the officials concerned was a corrupt practice and the failure on the part of the Presiding Officer to stop the breach of rules within the prohibited area gave the voters the impression that the respondents no. 1 and 2 had the support of the Government officials. On behalf of the respondents it is admitted that on the polling day the respondent no. 1 visited the Bahroo polling station but it is denied that anything improper was done there on behalf of the respondents. From the evidence of the parties we are not satisfied that anything irregular was done at the Bahroo polling station on behalf of the respondents no. 1 and 2. Puttu Lal P.W. 11 says that on the arrival of the respondents no 1 slogans of Mahatma Gandhi Ki Jai were shouted at the Congress camp which was only 50 or 60 paces from the polling booths. Similarly Jagraj Singh P.W. 28 says that on the arrival of the respondent no. 1 these slogans were shouted at the Congress camp which was 70 or 80 yards from the polling booths. According to the evidence of the respondent the Congress camp was only 150 yards from the polling booths and not within 100 yards. There is no allegation in the petition that the Congress camp itself was within 100 yards of the polling booths, nor was any such grievance expressed on the polling day, and if the Congress camp was more than 100 yards away from the polling booths as it should have been, then even if there was any demonstration at the Congress camp on Sri Bajpai's arrival there was nothing illegal, or improper in it; it would certainly have been an electoral offence under Section 130 of the Representation of the People Act, 1951, if it had been done within 100 yards of the polling station, but in no case would it be a corrupt practice. In respect of what happened inside the polling station Abdul Wahid Khan P.W. 9 presented a written objection Ex. P7 to the Presiding Officer complaining that Sri Bajpai was talking to the polling staff and on it the Presiding Officer noted down that he was not having any such talk; in his statement on

oath Abdul Wahid Khan says that this talk was only that Sri Bajpai enquired from the Presiding Officer if the screening arrangements were perfect so that nobody had any opportunity of peeping into the polling compartments, and certainly this talk was not in any way objectionable and no exception could be taken to it. This disposes of para 7E of the petition.

32. Coming to para 7F of the petition, it is alleged therein that on the polling day at the Chandrawal polling station Sheopal and Chandrika workers of the respondent no. 1 and 2 forcibly took some voters from the petitioner's camp to their own camp and also abused some voters and caused injuries to them and they particularly pulled down the voter Rameshwar from his bicycle. On behalf of the respondents it is denied that their workers Sheopal Singh and Chandrika Singh did any such thing at the polling station, and from the evidence of the parties we are not satisfied that Sheopal Singh or Chandrika Singh did any such thing and thus exercised any undue influence upon the voters. Besides Rameshwar the name of any other person who may have been maltreated in this way has not been given out, whether in the petition or in the petitioner's evidence, except that Mohd. Abdul Zahir half-heartedly names Sitla Prasad, and no such person has been examined as a witness; even Rameshwar has not been examined and no reason has been given for not producing him, specially when according to Kanti Swaroop P.W. 43 this Rameshwar was a worker of the petitioner. The petitioner's witnesses on this point are only his polling agents Mohd. Abdul Zahir P.W. 21, Vishwanath Shastri P.W. 30 and Kanti Swaroop P.W. 43, but as against them we have Sheopal Singh himself R.W. 4, Bhagwati Prasad R.W. 5, Pancham Singh of Bhagwant Khera R.W. 11, Ganga Prasad R.W. 13, Pancham Singh of Khatola R.W. 22, Chandrika Singh himself R.W. 26, Gur Prasad R.W. 48 and Surendra Nath R.W. 54 and we see no good ground to believe the petitioner's witnesses in preference to the respondents' witnesses. Certainly Viswanath Shastri P.W. 30 who was a polling agent of the petitioner presented a written complaint Ex. P100 to the Presiding Officer about it and on it the Presiding Officer noted his order. "Agents and workers have been warned not to create trouble. No further action necessary". However, there is no evidence that the Presiding Officer made any enquiry before writing down this order and the Presiding Officer himself has not been examined as a witness. In these circumstances we are not satisfied that the allegations of para 7F of the petition are true.

33. The allegations that remain in para. 7G of the petition after our order of 31st October, 1953 are that Srimati Yashoda Devi, a polling clerk on official duty at the Behta polling station, abused her official position and took the female voters from the camp of the respondents no. 1 and 2 to the polling booths and even to the polling compartments and also canvassed for these respondents, that the officials of this polling station further assisted the respondent No. 1 and 2 by allowing their worker Munnu Lal to go into and out of the polling booth any number of times he wanted for the purpose of taking the voters into polling booths, that the polling officers and polling clerks of this polling station frequently entered the polling compartments specially when certain voters were led by the agents of the respondents no. 1 and 2 and that all this assistance improved the prospects of the election of the respondents no. 1 and 2. All these allegations are denied by the respondents no. 1 and 2 and from a consideration of the evidence of the parties on this subject we are not satisfied that there is any truth in these allegations. The petitioner's witnesses on this point are only his polling agents, Vishwanath Prasad P.W. 38 and Shambhu Dayal P.W. 53, but as against them we have the testimony of four R.W.'s *viz.*, Yashoda Devi herself R.W. 7, Lalta Prasad R.W. 39, Munnu Lal himself R.W. 46 and Sri Shanghar Singh R.W. 53, and we see no good ground to believe the petitioner's witnesses in preference to the respondents' witnesses. In para 7G it has been alleged that the polling officers and polling clerks frequently entered the polling compartments but the petitioner's witnesses depose only about Srimati Yashoda Devi having gone into the polling compartments and about no other polling clerk and no polling officer. Shambhu Dayal P.W. says that Munnu Lal also went into the polling compartments, but there is no such allegation in the petition or nor does Vishwanath Prasad say any such thing. Two written complaints Exs. P106 and P107 were presented to the Presiding Officer that day in this connection; first Ex. P106 was presented over the signatures of these two witnesses of the petitioner and two other persons *viz.* Ravi Prakash and Ori Lal; later on Ex. P107 was presented over the signatures of Ravi Prakash only. In Ex. P106 it was stated about Yashoda Devi that she was canvassing for the Congress at the polling booths and the note of the Presiding Officer thereon is "No such thing has been established; however she is warned". In Ex. P107 it was stated about her that she was bringing female voters from the Congress camp to the polling booth and the note of the Presiding Officer thereon is, "This is not

correct". In these complaints there was no allegation at all that she was going into the polling compartments also and we are not satisfied that she was doing any canvassing or bringing any voters either for the Congress. As regards Munnu Lal it was alleged in Ex. P106 that he was frequently leaving the polling station to influence the voters and thereon the Presiding Officer noted "He was warned"; there was no other allegation against him in Ex. P106 or P107 and we are not satisfied that he either canvassed or influenced any voters inside the polling station or within the prohibited distance or even attempted to do so. No voter who may have been canvassed or influenced in this way or in respect of whom such an attempt may have been made has been examined or even named and in any case it would not be a corrupt practice but would be an electoral offence only under Section 129 of the Representation of the People Act in the case of Yashoda Devi and under Section 130 in case of Munnu Lal. This disposes of para 70.

34. Lastly, we have para 7H of the petition in which it is alleged that the respondents No. 1 and 2 employed more than the prescribed number of clerks in this election, but the petitioner has pressed this part of the case against the respondent No. 1 only, who alone is said to have employed the two extra clerks, Ganga Prasad and Vishwanath Pande. In para 7H it is further alleged that three motor drivers were also engaged in contravention of the election law and rules but this point has not been pressed at the time of trial and has been given up. Connected with para 7H there is also para 8 in which it is alleged that these two extra clerks were helped by other persons also in their work, but this point also was given up at the trial, with the result that we are now concerned with the employment of Ganga Prasad and Viswanath Pande only. The admitted facts of the case are that the total number of electors in this constituency was about one hundred and eleven thousand and so under Section 77 of the Representation of the People Act, 1951 and Rule 118 and Schedule VI of the Rules framed under this Act for the conduct of elections and election petitions the respondent No 1 could employ only two clerks and two messengers in connection with the election in addition to the election agents and counting agent and to the staff employed for the polling day at the polling stations; the respondent No. 1 employed two clerks Durga Prasad Srivastava and Ram Krishna Trivedi and two messengers Minajuddin and Ram Krishna and showed their remuneration alright in Part B of his return of election expenses; over and above this he showed in Part K of his return a sum of Rs. 550/- as paid to Ganga Prasad for preparing three copies of electoral rolls and sum of Rs. 275/- as paid to Vishwanath Pande for filling up the voters cards. The contention of the petitioner is that the employment of Ganga Prasad and Vishwanath Pande in these circumstance is a corrupt practice under Section 123(7) of the Act. The contention of the respondent No. 1 is that he got three carbon copies of the electoral rolls for Rs. 550/- at the rate of -/8/- per hundred voters on a contract basis from Ganga Prasad and the required number of voters' cards from Vishwanath Pande for Rs. 275/- at the rate of 4 Annas per card on a contract basis and that he does not know who were the persons who may have been employed by Ganga Prasad and Vishwanath for this work but Ganga Prasad and Vishwanath were not his employees at all within the meaning of the election law and as such there was no contravention of the law and no corrupt practice defined in Section 123(7) has been committed. His case is that his engagement of Ganga Prasad and Vishwanath Pande was not in connection with the election in the sense in which the words 'in connection with the elections' are used in Section 77 of the Act and Rule 118 and Schedule VI of the Rules, nor was it an employment within the meaning of the word 'employment' as used in these provisions in as much as these persons were engaged on a contract basis only, their remuneration having been fixed at the rate of so such money for so much work done and not at the rate of so much money for so much period of time. We may mention that the copies of electoral rolls are procured by a candidate so that he and his workers may know as to who the electors are who have to be approached and canvassed and also their utility is on the polling day itself; the voters' cards are got prepared by a candidate so that they may be handed over to the individual electors on or before the polling day to be taken by the electors to the polling station where with the help of these cards the entries of the names of these voters in the electoral rolls may be easily found out and thus the voting may be facilitated in favour of the candidate. Now it is not disputed that the engagement of Ganga Prasad and Vishwanath Pande by the respondent No. 1 was for this election and was for payment and the only question is whether it was an 'employment' and was 'in connection with the election' in the sense in which these words are used in Section 77, Rule 118 and Schedule VI.

35. On behalf of the respondents it is contended that the words "in connection with the election' in these provisions mean that the work for which the employment is made should be directly connected with the election. Although the word direct or directly has not been used in these provisions, yet it may in all fairness be conceded that any work in order to be 'in connection with the election' should be directly connected with the election and not only indirectly connected. Now we do not see how the work of preparation of copies of electoral rolls or the work of preparation of voters cards was not directly connected with the election or was only indirectly connected with it. The only reason advanced on behalf of the respondent in this connection is that copies of the electoral rolls and the voters cards were got prepared in respect of all the electors of the constituency and not only of those that were likely to vote for the respondent and so this work was only indirectly connected with the election; the answer to this argument is that the work was directly connected with the election in as much as all the electors on the rolls had to be approached and convassed on behalf of the respondent and not only some and also all of them had to be supplied with voters cards to facilitate their voting for the respondents. Further, the respondent No. 1 himself as his own election agent has shown the remuneration of Ganga Prasad and Vishwanath Pande in his return in Part K, the head note of which contains the specific word 'in connection with the election' and there is little force in his contention that this expenditure was not in connection with the election or was not directly connected with it. This expenditure was incurred to make the work of canvassing and polling easier by making it more systematic and methodical for the furtherance of the prospects of the election of the respondent No. 1 and was, therefore, certainly in connection with the election.

36. As to the word 'employment' the contention of the respondent No. 1 is that in order that engagement may amount to employment it should be at the rate of so much money for so much period, but there is no force at all in this contention and we think that an employment at the rate of so much money for so much work done or even for a lump sum for a fixed amount of work would be an employment in the sense in which this word has been used in the Act and the Rules. Our attention has been invited to para 2(b) of Schedule IV of the Rules and to the heading of Part B of the return of election expenses in which the words "rate of pay" and "rate of payment" have been used but we may mention that these words do not mean that the pay or payment should be only at the rate of so much money for so much period, and it may well be at the rate of so much money for so much work done as in this case and then there is also Part K of the return in which there is no mention at all of any rate of pay or payment. We hold, therefore, that the engagement of Ganga Prasad and Vishwanath was an employment within the meaning of Section 77 Rule 118 and Schedule VI inspite of the fact that it was at the rate of so much money for so much work done. In fact if the engagement of any persons at the rate of so much money for so much work done or for a lump sums were held to be outside the mischief of the election law there would be little point left in prescribing in Schedule VI the number of persons who may be employed in connection with an election as the provisions of Schedule VI could be easily circumvented by employing any number of persons on a contract basis at the rate of so much money for so much work done or for so much lump sum.

37. The employment of Ganga Prasad and Vishwanath Pandey by the respondent No. 1 was, therefore, for payment in connection with the election. They were employed as clerks for doing the clerical work of preparing copies of the electoral rolls and of preparing the voters' cards. The election law allowed only two paid clerks to the respondent No. 1 for the election and all the clerical work should have been done by these two clerks who could certainly be assisted by honorary workers but not by any paid clerks. The two paid clerks of the respondent No. 1 in this election were Durga Prasad Srivastava and Ram Krishna Trivedi shown in Part B of the return and no more paid clerks could be employed without contravening the election law. It is not the case of the respondent No. 1 that his employment of Ganga Prasad or Vishwanath Pandey was in any capacity other than clerical or that the nature of their work was other than clerical and we find that by employing them for payment in connection with the election the respondent No. 1 has contravened the provisions of section 77, Rule 118 and Schedule VI, and he has thus committed a major corrupt practice under Section 123(7) of the Act. In the case of this corrupt practice either there is no question of the application of the provisions of Section 100(3), because the employment was by the respondent No. 1 himself and as much the corrupt practice was committed b

the respondent No. 1 himself and not by any other person and there could be no question at all of the respondent having taken any means for preventing the commission of this corrupt practice.

38. Our finding on issue No. 5, therefore, is that the respondents No. 1 and 2 committed the major corrupt practice of Section 123(8) by obtaining the assistance from Arjun Singh, Gaya Din, Mansa Din and Shambhu Ratan Mukhias for furtherance of the prospects of their election by getting them issue the appeal Ex.P15 and that the respondent No. 1 further committed the major corrupt practice of Section 123(7) by employing Ganga Prasad and Vishwanath Pandey in contravention of Section 77 read with Rule 118 and Schedule VI, and that these corrupt practices cannot be condoned under Section 100(3). Any other corrupt practices forming the subject matter of issue No. 5 have not been proved.

39. *Issue No.* 10.—Another corrupt practice forms the subject matter of this issue and the allegations about it are contained in para 9 of the petition wherein it is stated that the Information Department of the U.P. Government issued a number of leaflets and pamphlets specified in Schedule 4 of the petition eulogising the activities of the Congress Government in Uttar Pradesh and these were distributed broadcast in the constituency by the respondents No. 1 and 2 with the object of furthering the prospects of their election without paying or accounting for them and that the obtaining of this assistance from the employees of the State by the respondents No. 1 and 2 is a corrupt practice; distribution by workers and agents was also alleged but as no names of any workers or agents were specified the allegation about any distribution by them was deleted by our order dated 31st October, 1953. By their written statements the respondents admit that the Information Department of the U.P. Government issued those days a number of leaflets and pamphlets regarding the activities of the U.P. Government in certain matters but contend that this was done by the Information Department in the ordinary course of its duties and not for the purposes of the election or for the furtherance of the prospects of the election of the respondents No. 1 and 2; they contend also that these publications could not in any way be in furtherance of the prospects of their election and their publication could not amount to obtaining or procuring any assistance from the employees of the State; it is also denied that this literature was distributed and broadcast, in the constituency by or on behalf of the respondents No. 1 and 2. The petitioner has examined Puttu Lal P.W. 11, Durga Bux Singh P.W. 20, Rati Ram P.W. 26 and Kamla Kant Pandey P.W. 44 to prove that in the election days some publications of the Information Department *viz.*, Ex. P32, P33, P70, P80, P82, P143, P144 and P145 were found at various places in the constituency, but has given no evidence at all to show that there was any distribution of these publications by or on behalf of the respondents No. 1 and 2. These witnesses depose about some other publications also viz., Ex. P34, P35, P67, P68, P69, P81, P146, P147 and P148, but these publications are not mentioned at all in Schedule 4 of the petition. The evidence of the respondents is that there was no circulation of these publications in the constituency those days and that in any case there was no distribution of them by the respondents No. 1 and 2 or on their behalf.

40. Certainly the issue of these publications commenced in the beginning of December 1951 as proved by the circular letters Ex.P156 to P160 of the Information Department of the U.P. Government to the District Information and Planning Officers and thus it synchronized with the election campaign of the several candidates in this election but we are not satisfied that these publications were issued for the purposes of the election or to further the prospects of the election of the candidates standing on the Congress ticket. It appears to us that these publications were issued by the Information Department in the course of performance of its normal function simply to bring to the notice of the public what the Government was going for its benefit after the attainment of independence, so that the public might make full use of these beneficial activities of the Government for the purposes of national development and progress, specially as the National Development Plan was also coming to a head those days in its concrete and practical shape. These circular letters show that this literature could be availed of by all the political parties of the country and not by the Congress alone and in fact the letter Ex.P158 was addressed to all the political parties in this connection, and although in the very beginning a little preference was certainly shown for the Congress by saying that the Congress units would get copies of this literature direct from the Information Department, yet this distinction was dropped within 3 days only and the Congress was placed at a par with all the other political parties. In these publications we find no preference at all to the election, and the Government is not preferred to at all as the Congress Government, nor is there any suggestion that any other Party Government would

not have carried out these reforms or would not continue these and similar beneficial measures in future, and in these publications any reference to elections or party politics has been scrupulously avoided. There is nothing on the record to show that the Congress or the respondents No. 1 and 2 availed of these publications or that the other parties or candidates did not or could not avail of them and in these circumstances it cannot be said that these publications, if found in the constituency in the election days, were there because of the respondents No. 1 and 2 and not because of any other candidates. Even non-political institutions of a public nature as libraries, Bar Associations, Colleges, Schools, District Boards and Municipal Boards could avail themselves of these publications as shown by the circular letters Ex.P159 and P160, while the circular letter Ex.P157 shows that anybody who desired to avail of these publications could get them irrespective of his political affiliations and so the responsibility for any circulation of these publications could not be fastened upon the respondents No. 1 and 2. These publications could be had free of any charge and so there was no question of any payment for them and of accounting for any such payment, and there is no allegation or evidence that the respondents No. 1 and 2 got these publications issued. Further, there is no evidence at all that the respondents No. 1 and 2 made any use of them in their election, though the U.P. Congress Parliamentary Board by its circular letter Ex.P154 did advise the Congress Committees and Congress candidates to make use of this literature in their election compaign. We are not satisfied that the publications in question were of such a nature as would have furthered the prospects of the election of the respondents No. 1 and 2, or that the respondents No. 1 and 2 got them issued by the Information Department of the Government or that the respondents No. 1 and 2 obtained or procured or even attempted to obtain or procure any assistance for the furtherance of the prospects of their election from the Information Department of the U.P. Government by the issuing of these publications and we find, therefore, that no such corrupt practice has been proved.

41. *Issue No.* 11.—The corrupt practice which forms the subject matter of this issue is alleged in para 15 of the election petition, wherein it is stated that on 27th January, 1952, *viz.*, four days before the polling the respondent No. 1 with a large number of workers armed with lathis and brickbats in a motor truck attacked the workers of Ram Rajya Parishad, Jan Sangh and K.M.P. Party when they were doing their election propaganda in the Banthra market; the petitioner was a candidate of the K.M.P. Party and his workers were asked by the respondent No. 1 to stop their propaganda and on their refusal the respondent No. 1 and his workers attacked them with the result that their car was damaged and their announcer was injured by a brickbat thrown by the respondent No. 1 himself; the local police though present did nothing and the incident created the impression that the respondent No. 1 was above law and order and could assault any one who dared to oppose him; also the local authorities did not take any action against the respondent No. 1 and their failure to take any action terrorized the voters of the locality and furthered the prospects of the election of the respondent No. 1. All these allegations are denied by the respondent No. 1 in his written statement wherein he says that 27th January, 1952, was a market day at Banthra and the workers of the different parties were doing their election propaganda in the market place and at that time some excitement was caused there, and apprehending a clash the respondent No. 1 appealed to the people present to remain peaceful and quiet and his appeal was successful. The parties have entered upon evidence on this point; the petitioner's evidence is to the effect that the workers of Ram Rajya Prishad, Jan Sangh and K.M.P. Party were carrying on their election propaganda peacefully that day in the Banthra market when the respondent No. 1 came up there in a truck with some 20 persons armed with lathis and brickbats to make his own propaganda and he turned out the workers of the Ram Rajya Parishad and Jan Sangh from the market place, but the workers of the K.M.P. Party, including Iqbal Ahmad P.W. 24, who was making a speech at that time, refused to stop their propaganda or to leave the market place and thereupon they were attacked by the respondent No. 1 and his men who injured their car and also the respondent hit Iqbal Ahmad with a brickbat which struck him on the stomach; the evidence of the respondent No. 1 to the contrary is that the trouble and distrubance was created by the workers of the K.M.P. Party itself while the respondent No. 1 and his workers were quiet and peaceful all along and no man of the K.M.P. Party was injured nor was the car of his party damaged. From a consideration of all this evidence we are satisfied that Iqbal Ahmad P.W. 24 did suffer an injury on the abdomen that day in the Banthra market and the same

evening at 6-15 P.M. he was admitted to the Lucknow Medical College Hospital where his injury was examined and his statement recorded as proved by his bed head ticket Ex.P75 and his statement dated 27th January 1952, Ex.P76 recorded by a doctor in the duty room register. In this statement Iqbal Ahmad stated that he had gone to Banthra with other men of the K.M.P. Party for election propaganda and was making a speech there when a quarrel arose between him and a Congress man Pandit Harish Chandra Bajpai (respondent No. 1) after which the men of both the parties (the Congress and the K.M.P. Party) started throwing earth etc. and when he (Iqbal Ahmad) tried to pacify Pandit Ji (Sri H. C. Bajpai) the latter hit him with a piece of brick which struck him on the abdomen. This statement of Iqbal Ahmad dated 27th January, 1952 shows that that the incident in question was of an ordinary nature only which took place in the heat and excitement of the moment for which both the parties must have been responsible and it would be almost impossible to apportion the blame for it between the parties. Such minor clashes are not unusual in the election days and we are not satisfied at all that it took place in the circumstances or was of the magnitude alleged by the petitioner. We are further not satisfied that by this incident any attempt was made to intimidate the voters and thereby to exercise any undue influence upon them or to interfere with the exercise of any electoral right, or that this incident and any such effect. Perhaps the remedy of the petitioner was under the ordinary criminal law only by having recourse to the police and the magistracy and there is nothing on the record to show that any such approach was made. In these circumstances the petitioner cannot be allowed to exploit the Banthra incident for the purposes of his election petition and we find that no such corrupt practice of undue influence has been made out.

42. *Issue No.* 6(a).—This issue is about the minor corrupt practice of the returns of the election expenses of the respondents being false in material particulars as defined in Section 124(4). The allegations about this corrupt practice are contained in para. 7L of the petition, but it is not alleged or contended that this corrupt practice has materially affected the result of the election, and the only contention is that in fact the respondents No. 1 and 2 far exceeded the prescribed limit of the election expenses but in their returns they purposely omitted to include several items of expenditure to keep the expenses within the prescribed limit. It is also contended that the respondents engaged on payment more persons than the number allowed by law, but this contention forms the subject matter of para 7H also and has already been dealt with under issue No. 5. The items alleged to have been omitted in the returns are specified in para. 7L at serial numbers (i) to (xvii), out of which the itesm No. *(i)*, *(ii)*, *(iii)*, *(iv)*, *(xii)*, *(xiv)*, *(xv)* and *(xvi)*, relating to petrol running expenses of motor vehicles, travelling expenses of workers, stationery and advertisement, processions, refreshments and postage have been ordered by us on 31st October 1953 to be deleted on the ground of vagueness and indefiniteness, and in these circumstances it has been conceded on behalf of the petitioner at the time of arguments that even if the omitted items that remain undeleted be included in the expenses of the respondents shown in the returns the maximum limit prescribed would not be exceeded. Further, it is not contended on behalf of the petitioner that any of the undeleted items has any connection with any corrupt or illegal practice, and in these circumstances we are unable to hold that the returns of election expenses of the respondents are false in material particulars or that the corrupt practice of Section 124(4) has been omitted by not entering these items in the returns. The returns could be said to be false in material particulars if the non-inclusion of the omitted items was with a purpose such as to keep the expenses within the prescribed maximum or to conceal any corrupt or illegal practice. In the absence of any such purpose the omission of these items would not make the returns false in any material particulars nor would it amount to a corrupt practice; the omission may have been due only to inadvertance or to an honest mistake and no ulterior motive could be imputed to the respondents, nor could they on the ground of such omission be unseated or even disqualified.

43. In view of what has been said above in respect of the returns of election expenses it will be quite useless to examine these omitted items in detail, but because the respondents challenge them the following brief examination will not be out of place:—

Item No. (v).—This item relates to the expenses of maintenance of the election officers of the respondent No. 1. About some offices it was alleged that the expenses had not been shown in full but this allegation was deleted by us on the ground of vagueness and indefiniteness. About some other offices including the Lucknow central office it was alleged that the expens

office only and was given up in respect of the other offices. The respondent No.1 has been living in a room in the Councillors' residence in Lucknow on payment of rent and his case is that his election office was in a hired tent on the grounds of the Councillors' Residence and he has included the hire of this tent alright in his return while no other expenses were incurred. The case of the petitioner is that the office was not in any tent but was in the room itself and the room rent should have been shown in the return. We believe the respondents' case in preference to the petitioner's case on this point and hold that the expenses of the Lucknow office have been shown alright. Even if the office was in any room of the Councillors' Residence there is no evidence to show that a separate room was used by the respondent for the office and it may well be that he only used for his office a portion of the accommodation already at his disposal in the Councillors' Residence for which he had not to pay any extra rent to be shown in the return of his election expenses.

Item No. (vi).—The petitioner's contention is that the respondent have not included in their returns the amounts deposited by them as a security under Section 34 of the Representation of the People Act, 1951. The reply of the respondents is that because on the declaration of the result of the election it became certain that these amounts would be returned to them it was not at all necessary for them to include them in their returns. We accept the contention of the respondents.

Item No. (vii).—The petitioner's contention is that the respondent No. 1 has not shown the price of the general stamps purchased for filing the declarations with the return of election expenses. The reply of the respondent No. 1 is that the stamps had not been purchased when the return was prepared and that he did not know that any stamps would be required for this purpose. The price of the stamps was Rs. 4/- only and we are doubtful if it was really necessary to include this amount in the return.

Item No. (viii).—The petitioner's contention is that when applying for the Congress tickets for the election the respondent No. 1 paid Rs. 100/- and the respondent No. 2 Rs. 50/- to the U.P. Congress Parliamentary Board and they should have included these aments in their returns which they have not done. The explanation of the respondents for not showing these amounts is that at the time of paying these amounts they were not candidates at all within the meaning of the Representation of the People Act, 1951 and as such the expense was not an expense in connection with the election and was not required to be shown in the return. In the definition of the word "candidate" given in Section 79(b) of the Act it is laid down that a person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate, and applying this test in this case we are of the opinion that by applying for the Congress ticket the respondents began to hold themselves out as prospective candidates and as such the amounts paid by them with the applications to the U.P. Congress Parliamentary Board were expenses in connection with the election and should have been shown in the returns.

Item No. (ix).—The petitioner contents that the respondent No. 1 has not shown in his return the sum of Rs. 100/- paid by him to the District Congress Committee, Lucknow, in connection with his election. The respondent No. 1 admits having paid Rs. 100/- to the District Congress Committee but contends that it was not at all in connection with the election and so it was not shown. We are not satisfied that this payment was in connection with the election and in our opinion it was not necessary to include it in the return.

Item No. (x).—This item has not been pressed by the petitioner at the time of arguments and has been given up as it is about the expenses of a trip made by the respondent No 1 to Delhi before filing the nomination and the petitioner concedes that this trip was not in connection with the election but was in connection with the election to the House of the People only, for which the respondent No 1 wanted the Congress ticket.

Item No. (xi).—The contention of the petitioner is that all the expenses of the election meetings specified in Schedule 2 of the petition have not been shown in the returns of the respondents No. 1 and 2. However, the petitioner has given no evidence to show that any expenses incurred for these meetings have not been shown; in respect of some of the meetings there is no evidence at all to show that any expenses were incurred and in respect of a few meetings there is no evidence at all to show that any such meetings were even held. In this connection the petitioner has been able to satisfy us on one point only and it is that an election meeting of the respondents was held at Kakori on 16th December 1951 for which the announce by means of a printed notice EX. P173, but the expenses of

the printing and publication of this notice have not been included in the returns, though they should have been included. However, these expenses should be more than Rs. 25/- or Rs. 30/- only.

44. *Item Nos. (xiii) and (xvii).*—Item No. (xiii) is about the expenses alleged to have been incurred by the Congress organization towards the furtherance of the prospects of the election of the respondents No. 1 and 2. The respondents admit that such expenses have not been shown but their explanation is that these expenses were not in furtherance of the prospects of the election of the respondents No. 1 and 2 particularly but were in connection with the general election propaganda of the Congress for the benefit of all the Congress candidates; their contention is that these expenses were not made, authorized or consented to by the respondents and as such they were not required by law to be shown in the returns. However, the petitioner has not given any particulars of these expenses except that under item (xvii) he has repeated these allegations in respect of the election literature comprising of handbills, notices, circulars, pamphlets and posters specified in Schedule 3 of the petition. The same charge was repeated in para. 14 of the petition but we have ordered that para. to be deleted for want of particulars. The result is that this charge stands now only in respect of the election literature specified in Schedule 3 and the petitioner has adduced some evidence about its having been printed under the orders of the Congress and about its distribution in the constituency in the eletcion. Some of this literature was printed under the orders of the All India Congress Committee and must have been for the benefit of the Congress candidates all over India; some was printed under the orders of the U.P. Congress Parliamentary Board and must have been for the benefit for all the Congress candidates of U.P.; the rest was printed under the orders of the Lucknow District Congress Committee and must have been for the benefit of all the Congress candidates of the Lucknow district. The candidates for whose benefit all this literature was published comprised of candidates for the various State Assemblies and of the candidates for the House of the People and their number must have been very large. The cost of this literature will have to be divided between all the Congress candidates and the petitioner concedes that the proportionate share of the respondents No. 1 and 2 shall not come to more than Rs. 300/- or Rs. 400/- each. We are unable to accept the contention of the respondents that it was not necessary for them to show this item in their returns of election expenses. The respondents stood in this election on the Congress ticket and as such the Congress organization was their agent for the purposes of this election within the definition of the word 'agent' given in Section 79(a) of the Representation of the People Act, 1951; in these circumstances no express authority from the respondents No. 1 and 2 for the incurring of expenses was necessary for any expenses incurred by the Congress organization in their election, and the respondents No. 1 and 2 will be deemed to be responsible for these expenses. The proper course for the respondents No. 1 and 2 would, therefore, have been to include their proportionate share of these expenses in their returns by showing it under the head of Expenses and by showing an equal amount under the head of Receipts.

However, as already observed the omission to include these items of expenditure in the returns was not with a view to keep the expenses within the prescribed limit nor had any of these items any connection with any corrupt or illegal practice and consequently the omission does not make the returns false in any material particulars, and as such it is not a corrupt practice at all and no penalty can be imposed upon the respondents for this omission.

45. *Issue No. 6(b).*—The allegation of the petitioner in this behalf was only that there were technical defects and mistakes in the preparation of the returns of the election expenses of the respondents, and he gave it up at the time of arguments as the alleged mistakes and defect, if any, do not appear to be of any consequence.

46. *Issue No. 7.*—This issue is about the employment of paid clerical workers in excess of the prescribed number and the point has already been dealt with under issue No. 5.

47. *Issue No. 9.*—This issue was based upon para. 14 of the petition which para. has been deleted by us on the ground of vagueness and indefiniteness. However, the same allegations are also contained in para. 7L (xiii) and (xvii) and have already been dealt with under issue No. 6(a).

48. *Issue No. 8.*—This issue is about the irregularities mentioned in paras. 10, 11, 12 of the petition. In para. 11 it is alleged that on the polling day indelible ink was not used and in para. 12 the allegations are that after the polling the ballot boxes were not kept in safe custody and that at the time of the counting of votes

more than one ballot box were opened at the same time; however, no evidence was led on these points and at the time of arguments the allegations about the non-user of indelible ink and about the opening of more than one ballot box simultaneously were given up and because of lack of evidence we are not satisfied either that the ballot boxes were not kept in safe custody.

49. In para. 10 it was alleged that the ballot boxes used at the election were such that ballot papers could be withdrawn therefrom and introduced thereinto without the box being unlocked and the seal being broken and that this was in express contravention of the provisions of rule 21 of the Rules of 1951 framed for the conduct of elections and election petitions, and was an irregularity materially affecting the election. It was also alleged that the petitioner had reason to believe that the ballot boxes were actually tampered with, but this allegation was deleted by us on the ground of vagueness and indefiniteness.

50. On the point of the ballot boxes being vulnerable the petitioner examined a witness Jai Singh Parihar P.W. 46 who demonstrated before us practically that the ballot boxes used at the election could be opened without being unlocked and the paper seal being broken and could again be closed. For this purposes some ballot boxes used in this election and now in the custody of the District Election Office, Lucknow, were sent for; one of them was then locked and sealed in accordance with the instructions of the Godrej Company contained in their leaflet Ex. P155 for the closing and sealing at the close of the polls; thereafter this witness operated upon the box and, without opening the lock or breaking the paper seal, succeeded in opening the box so that with the lock and paper seal intact papers could be introduced into the box or extracted from it; then he closed the box and brought it back to its former condition with lock and paper seal intact so that papers could not now be introduced into or extracted from it. He took about six minutes to open the box and about four minutes to close it again, and his claim is that he can open and close other ballot boxes also like this and that he has given this demonstration before other Tribunals and Officers also In this circumstances our finding is that the ballot boxes used in this election did not come upto the standard laid down in Rule 21, and as such it was a non-compliance and irregularity within the meaning of Section 100 (2) (c).

51. But the further question is as to whether this irregularity materially affected the result of the election. There is no evidence that the ballot boxes were actually tampered with, or that they were not kept, in safe custody, or that anybody acquainted with the process of opening and reclosing the boxes had access to them. On behalf of the petitioner our attention has been invited to the Ballot Paper Accounts prepared by the Presiding Officers of two polling stations, Baragaon and Kakori, under Rule 33 and to the Account of Ballot Papers prepared by the Returning Officer under Rule 46 and it has been pointed out that according to the account of the Returning Officer 2562 ballot papers were actually found in the ballot boxes of the Baragaon polling station while 17 ballot papers were found rejected making up the total of 2579 as against 2381 the number of ballot papers actually used at this polling station according to the account of the Presiding Officer and thus there was an excess of 198 ballot papers, and according to the petitioner the only explanation for this excess was that after the polls the boxes had been tampered with and 198 ballot papers had been wrongfully introduced into them. Similarly in respect of the Kakori polling station it has been pointed out that according to the Returning Officer's account 3191 ballot papers were actually found in the ballot boxes and 170 ballot papers were found rejected making up the total of 3361 as against 5652 the number of ballot papers actually used at this polling station according to the Presiding Officer's account, and according to the petitioner the only explanation for this big shortage was that after the polls the boxes had been tampered with and 2291 ballot papers had been wrongfully extracted from them. However, in the absence of any evidence of tampering or any chance of tampering this explanation on behalf of the petitioner can not be accepted as it is possible that there may be some arithmetical mistake in the account or the electors themselves may have taken away their ballot papers or introduced some more ballot papers surreptitiously at the time of entering the polling compartments for casting their votes. We hold, therefore, that it has not been proved to our satisfaction that the irregularity in question materially affected the result of the election and this disposes of issue No. 8.

52. *Issue No.* 12.—In view of all that has been said above our finding is that the respondants No. 1 and 2 committed the corrupt practice of Section 123(8) of the Act by their obtaining assistance from four village Mukhias, Arjun Singh, Gaya Din, Mansa Din and Shambhu Ratan for the furtherance of the prospects

of their election by issue of the appeal Ex. P15, and that the respondent No. 1 further committed the corrupt practice of Section 123(7) by his employing for payment Ganga Prasad and Vishwanath Pande in the connection with the election in excess of the prescribed number of paid workers. Because of their commission of these corrupt practices their election must be declared void under Section 100(2) and also these corrupt practices must entail a disqualification in respect of them under Section 140 of the Representation of the People Act, 1951, and the provisions of Section 100(3) do not help them in any way. In respect of these corrupt pratices we do not think it proper to name any other person for disqualification. No other corrupt practice, no illegal practice and no irregularity materially affecting the result of the election has been proved to our satisfaction. As regards the cost of the election petition we would order the parties to pay their own cost inspite of the petitioner's success, and our reasons are that though a large number of grounds were taken for avoiding the election he has succeeded on two grounds only and one of these grounds was only subsequently introduced in the petition by amendment, and further the respondents themselves have had to incur much expense in defending themselves in respect of other grounds which the petitioner has ultimately failed to establish.

(Sd.) A. SANYAL,
Advocate Member,
23-3-55.

(Sd.) R. SARAN,
Chairman.
23-3-55.

Per M. U. Faruqi

1. I perused the judgment of my learned colleagues. I agree with them in the final conclusions arrived at on almost all the issues and parts thereof though my approach to the findings and in respect of appreciation of evidence on certain points is slightly different. But I do not propose burdening my judgment with any discussion of evidence and of the points involved because of agreement on the final conclusion. There are, however, two points which I shall discuss at some length because my conclusions are fundamentally different from those arrived at in the majority judgment. One of those points relates to the employment of unauthorized persons and the other is about the Mukhias. Because of their findings on these points only, my learned colleagues propose unseating the respondents no. 1 and 2 and allowing the petition. My view, on the other hand, is that even these points must be decided against the petitioner. I proceed to give my reasons.

2. *Employment of Unauthorised Persons.*—An analysis of the allegations contained in paragraph 7th of the petition will show that the petitioner made the following allegations:—

(1) Both the respondents committed the corrupt practice of employment of unauthorised persons.

(2) The respondent No. 1 employed Ganga Prasad and Vishwanath Pande

(3) The respondent No. 1 employed 3 drivers and

(4) The respondent No. 1 employed several other workers on payment

There is no evidence on record on this point againt respondent No. 2. The allegation about the employment of 'several other workers on payment' being too vague was deleted under these orders of the Tribunal. The case about the employment of the drivers was not pressed and given up during the course of arguments from the side of the petitioner.

3. Thus there remained only the allegation about employment of Ganga Prasad and Vishwanath Pande. Allegation of the petitioner regarding these two persons is that they were employed by the respondent No. 1 as clerks in excess of the prescribed number. No attempt was made from the side of the petitioner to prove the factum of employment of these persons as clerks. On the other hand the respondent No. 1 stated in the written statement that work was done by these persons on contract basis. When he came in the witness box as R W. 55, the respondent No. 1 repeated the same thing adding that these persons did no other work of election. The receipts forming the part of the return of election expenses filed by the respondent No. 1 before the Returning officer also go to show that one of the two persons prepared 3 carbon copies of the electoral rolls for Rs. 550/- at the rate of -/8/- per 100 voters and the other prepared voters' cards for Rs. 275/- at the rate of -/4/- per 100 voters and that the work was done on contract basis. Thus the proved facts are that Ganga Prasad and Vishwanath Pande

supplied the respondent no. 1 with three copies of electoral rolls and with voters' cards and got Rs. 550/- and Rs. 275/- respectively in return for the things supplied. It was, however, argued that these two persons did clerical work on payment of money in connection with election and that, therefore, the respondent who employed them came within the clutches of Section 123(7) read with Section 77 of the Representation of the People Act, 1951. My opinion after due consideration of the relevant provisions of law is that these two persons were neither *employed on payment* nor were they employed *in connection with election* within the meaning of Section 77 read with Rule 118 and Schedule VI of the Rules and, therefore, the respondent no. 1 is not hit by Sub-Section (7) of Section 123 of the Act and no major corrupt practice is proved to have been committed.

4. Chapter VIII of Part V of the Representation of the People Act, 1951 (hereinafter to be called the Act) deals with the 'Election Expenses'. This Chapter consists of three Sections 76, 77 and 78. I am concerned with the first two sections. Section 76 prescribes the procedure and method of preparation and filing of the return of election expenses. Sub-Section (2) of this Section is as follows:—

> Every such return shall be in such form and shall contain such particulars as may be prescribed, and shall be accompanied by declarations in the prescribed form by the candidate and his election agent made on oath or solemn affirmation before a magistrate.

Section 77 relates to the maximum election expenses and to the number of persons employed. This Section is as follows:—

> 'The maximum scales of election expenses at elections and the numbers and descriptions of persons who may be *employed for payment in connection with election* shall be such as may be prescribed.

The provisions of Chapter VIII referred to above have been elaborated in Chapter VII of Part II of the Representation of the People (Conduct of Elections and Election Petitions) Rule 1951 (hereinafter to be called the Rules). Rule 112 relates to the return of election expenses. Sub-rule (2) of this Rule is to be read along with Section 76. Relevant part of that sub-rule is as follows:—

> 'Every such return shall be in Form 26 and shall contain the particulars specified in paragraphs 1 and 2 of Schedule IV and shall be accompanied by the declarations referred to in Sub-section (2) of Section 76.'

In paragraph 1 of Schedule IV while dealing with receipts it is laid down that money 'received in respect of expenses incurred *on account of, or in connection with or incidental to the election*' must be shown. Paragraph 2 deals with expenditure. It is laid down in Sub-paragraph (b) that 'the name, and *the rate and total amount of pay* of each person employed as an agent (including the election agent) clerk or messenger' should be shown.

I have purposely underlined certain portions of Section 77 and of some of the Rules cited above. My object in doing so is to lay emphasis on the underlined passages as I shall show later on that those passages help me in coming to the conclusion to which I have arrived.

Form 26 of the Rules has been referred to in Sub-rule (2) of Rule 112. Paragraph 1 of that Form is for 'Receipts' which have been described as:—

> Including all moneys, securities and equivalent of money received from any person (including the candidate himself), club, society, or association in respect of any expenses, whether paid or remaining unpaid, incurred on *account of, or in connection with, or incidental to the election.*

Paragraph 2 of Form 26 is for 'Expenses' and the same language as is in paragraph 1 has been employed including the oft repeated phrases *viz* 'on account of', 'in connection with' and 'incidental to'.

This brings me to Rule 118 which is in Chapter VII and is after Rule 112. It is naturally governed by the provisions preceding it. This rule is as follows:—

> No person other than, or in addition to, those specified in Schedule VI shall be *employed for payment* by a candidate or his election agent *in connection with* an election.

The underline phrases of this Rule have been repeated in Schedule VI as well.

5. It may be noted that the phrases 'on account of' and 'incidental to' which are used in Rule 112, in Schedule IV and also in Form 26 have not been used either in Section 77 or in Rule 118 or in Schedule VI. It was argued from the side of the petitioner that all the three phrases on account of', 'in connection with' and 'incidental to' convey the same meaning. To say this is to assume that the legislature has used redundant words in the Rules which assumption cannot obviously be made. My interpretation of law is that these phrases have been used to convey different meanings. The phrase 'in connection with' indicates direct connection with an election and the other two phrases have been used to indicate different stages of indirect connection. I am further fortified in my conclusion from the well known principle, that the provisions of criminal law are to be strictly construed and that where there is a doubt the accused should be given the benefit thereof. The election cases are of quasi criminal nature and the respondent in such case is like an accused against whom the case should be proved to the hilt. The employment of persons in excess of the prescribed number is a major corrupt practice under Section 123(7) of the Act and if that corrupt practice is proved the whole election carried out at enormous costs is to be set aside. For all these reasons it is necessary to give restricted meanings to the phrase in question and to hold that only those come within the clutches of Section 77 of the Act and Rule 118 of the Rules who are *employed for payment*, in excess of the prescribed number, for work *directly relating to the election.*

6. I proceed now to apply the above interpretation to the facts of the case. It is found as a fact that the respondent No. 1 got three carbon copies of the electoral rolls for Rs. 550 at the rate of -/8/- per 100 voters on contract basis from Ganga Prasad and the required number of voting cards from Vishwanath Pande for Rs. 275 at the rate of -/4/- per 100 cards also on contract basis. It is obvious from the proved facts that the transaction was for supply of certain articles of particular description from certain persons. It was certainly not an employment on payment of these persons to do some work. The transaction was akin to a transaction of sale and purchase more than to the employment of any persons on pay basis. For coming to the conclusion that these two persons were *employed for payment* and in connection with election, the language of the relevant provisions of the law will have to be stretched the strain of which it cannot bear.

7. The question is as to what is the direct work of election. Direct work must have connection with canvassing by the persons concerned or it should amount to assistance for the furtherance of the prospects of the candidate's election. The printers of posters and other election literature, the drivers of vehicles which carry the workers for canvassing, the cooks who prepare food for the workers, the persons who pitch tents and Shamianas for holding election meetings or for camps of the candidates at the polling station, the lawyers who are engaged for legal advice to candidates during election can be employed in any number so long as the prescribed maximum is not exceeded. Their employment cannot bring a candidate within the clutches of law because those persons have nothing to do with canvassing and do not help the prospects of election of the candidate concerned.

It is well known rule of interpretation of statutes that an interpretation leading to absurdity should always be avoided. In the present case if the interpretation of the petitioner's side is accepted certain absurd conclusions will have to be drawn. The printers etc. described above will have to be treated as 'employed for payment in connection with election' which obviously is an absurd conclusion.

Preparation of copies of electoral rolls as also the preparation of the voters cards is an innocent job incidental to election. It has nothing to do with canvassing for any candidate. Moreover the two persons involved were not employed on payment. They were given the contract to supply the articles.

It was argued that the making of the carbon copies of the electoral rolls and the preparation of voters' cards were works directly in connection with the election. In my opinion this is not so. The two persons concerned cannot be said to have indulged in canvassing nor can it be said that their work was in furtherance of the prospects of the candidate's election. The copies of the electoral rolls and voters' cards related to all the electors irrespective of the fact that some of the electors might and some might not vote for the respondent No. 1. It was further argued that the respondent No. 1 himself showed in his return this expenditure in Part K of Form 26 in which the phrase 'in connection with election' has been used. This can only amount to an admission on a point of law for which the party cannot be taken to task. Moreover it was not possible for the respondent No. 1 to show this expenditure under any other Part of Form 26 except Part K which is meant for miscellaneous expenditure. It may be noted

that Form 26 itself contemplates employment of persons other than those specified in Schedule VI as appears from Part D of the said Form where it is enjoined that

> 'In this part shall be shown the travelling expenses of persons (not being agents, clerks or messengers) *whether in receipt of salary* or not, incurred or paid by the candidate, his election agent or the person so travelling.'

The question is as to who would be persons in receipt of salary other than agents, Clerks and messengers. Obviously this refers to persons employed for work indirectly connected with the election. I have described some such persons elsewhere by way of illustration.

8 In this connection three decisions of different Election Tribunals were cited—one from the side of the petitioner and two from the side of the respondent No. 1. The one cited from the side of the petitioner is Election Petition 87 of 1952 (Abdul Rauf Vs. Mukhtar Ali and others) published in the Gazette of India Extraordinary Part II Section 3, dated January 5, 1953 page 7. In this case 6 persons were employed as Clerks and messengers which number was admittedly in excess of the prescribed number. It was admitted in the written statement that these six persons were employed to carry on the candidate's work in connection with the election. The respondent of that case had to address a printed letter of request to vote for him. These persons not only filled in printed letter but also delivered the same to the electors. These persons were described in the return of election expenses as clerks and messengers and were employed on monthly salary. In the case before me the two persons concerned are not described as clerks. It is found as a fact that they did job work on contract basis and not on monthly salary and that their work had nothing to do with canvassing. It is, therefore, clear that the above decision does not help the petitioner.

The other case cited is of the Patiala Tribunal of which our learned Chairman was one of the members. It is Election Petition No. 100 of 1952 (Ghasi Ram Vs. Rama Singh and others) published in the Gazette of India Extraordinary, dated February 21, 1953 Part II Section 3 page 477. In this case one singer named Kanhaya Ram was employed on monthly basis to carry on the election propaganda. By employing him the respondent of that case clearly came within the clutches of sub-section (7) of section 123 of the Act. While dealing with this point the Tribunal which decided that case remarked:

> Kanhaya Ram's employment does not come under any of the categories as specified in Schedule VI. The plain meaning of Section 77 read with Rule 118 and Schedule VI appears to be that except for the persons specified in the schedule a candidate is not authorized to employ any other person for payment for any kind of work in connection with his election. *This refers to direct employment and would not apply to indirect employment of persons—such as a printer of advertisement or election literature, who do the job for payment in the course of their usual business.* (page 482).

The above remarks support the view that I have taken.

In the third case which is of Bhopal Tribunal the matter has been dealt with elaborately and in detail. It is Election Petition No. 94 of 1952 (Pandit Sheo Narain Vaidya Vs. Sardar Mal Lalwani) published in the Gazette of India Extraordinary, dated March 11, 1953 Part II Section 3 page 745 (at 761 to 763). In this case a motor driver was employed on payment to carry workers in different parts of the constituency. It was held that this was not employment in connection with the election within the meaning of Section 77 of the Act and Rule 118 and Schedule VI of the Rules and that, therefore, the candidate who employed the driver was not hit by Section 123(7) of the Act. I fully agree with the reasoning given in this judgment. It may be noted that in the present case even the employment for payment has not been proved the work having been done on contract basis.

There is yet another case which can usefully be cited in support of the view that I have taken. It is Election Petition No 267 of 1952 (Bhola Nath Vs. Krishna Chandra Gupta) decided by the Faizabad Election Tribunal of which Sri (now Mr. Justice) D. N. Roy and two of us were members. (6. Election Law Reports 104). In that case a lawyer was employed for payment of Rs. 100 to safeguard the interests of the respondent of that case at the time of scrutiny of the nomination papers. This expense was shown by the respondent in the return of his election expenses. The petitioner of that case contended that the lawyer was employed in contravention of Rule 118 and Schedule VI of the Rules and hence

the respondent was hit by the provisions of Sub-Section (7) of Section 123 of the Act. The Tribunal held that the engagement of the lawyer was not 'employment' within the meaning of the term in Schedule VI framed under Rule 118 of the Rules. It is clear that one who is employed to safeguard interest of candidate at the time of scrutiny of the nomination paper is associated with the election much more closely than Vishwanath Pande and Ganga Prasad whose connection with the election was remote and who did the job only on contract basis.

My conclusion, therefore, is that, for the reasons given above Ganga Prasad and Viswanath Pande were neither employed for payment nor were they employed in connection with the election within the meaning of Section 77 of the Act and Rule 118 and Schedule VI of the Rules and hence the respondent No. 1 does not come within the clutches of Sub-Section (7) of Section 123 of the Act.

9. *Mukhias.*—The next question in respect of which I differ from the majority view is that of those Mukhias who are held to have given assistance to the respondents No. 1 and 2 for the furtherance of the prospects of their election, by signing and issuing a leaflet which is Ex. P15 and in which the electors are asked to vote for the said respondents and also for Srimati Vijay Lakshmi Pandit who was a congress candidate for the House of the People.

The allegation in respect of the Mukhias came up for our investigation in rather an unusual way which I need not discuss here in any detail. However the reiteration of bare facts is necessary. This petition was filed before the Election Commission on June 9, 1952. It did not contain any allegations about the Mukhias. Long after the filing of the petition an application was made by the petitioner on February 27, 1953 by which new allegation in respect of the Mukhia was sought to be introduced in the petition by addition of that allegation therein. The amendment application was vehemently opposed by the respondents. However majority decided incorporation of the amendment in the petition.

As a result of the granting of the amendment application following has been added in paragraph 7(c) of the petition.

> Village headmen with their names and the fact that they worked and issued appeal and subsequently they became the polling agents of respondents No. 1 and 2.

It is unnecessary here to point out that the amendment sought to be incorporated in the petition lacks proper construction and is not satisfactorily worded. Further, even when this amendment is read with the preamble of paragraph 7 and of Sub-paragraph C it remains ambiguous because it is not clear for whom the village headmen worked and for whom they issued appeal However, what is to be noted in particular at this stage is that 'worked' and 'Issued appeal' are very general and vague. Under Sub-Section (2) of Section 83 of the Act full particulars should have been set forth and the date and place where the Mukhias had 'worked' or 'issued appeal' should have been given. The want of these particulars was pointed out to us and on September 11, 1954 we passed order which is annexure C of the judgment. We refused to allow the petitioner to lead evidence about the work done by the Mukhias for want of particulars. Words 'issued appeal' were equally ambiguous but the said order does not specifically speak about its ambiguity. The result was that, without any particulars about the issuing of appeal as envisaged in Sub-Section (2) of Section 83 of the Act. we proceeded with the hearing of the case and the evidence was adduced about circulation of the leaflet Ex. P15 and about the admissions of the Mukhias to certain persons to the effect that they had issued the appeal. When Balram (P.W. 33) was asked for the first time about the admission of one of the Mukhias and about getting a copy of the leaflet Ex. P15 the respondents' counsel objected but the objection was over-ruled by the majority with the result that all the evidence about the admission of Mukhias and about circulation of the leaflet Ex. P15 came on the record. Though that evidence has come on the record, it should not be considered for the purpose of the decision of the case. It is beyond the pleadings and as such must be discarded. This principle has been accepted and followed in good many judicial decisions including those of the Privy Council. In election cases also this principle has been followed in several cases as for example the case of the Bhopal Tribunal cited elsewhere in this judgment (*vide* page 757 paragraph 58). This being so, the petitioner's evidence about the issuing of the appeal Ex. P15 by some Mukhias and about circulation must be discarded

10. I, however, proceed to deal with the evidence that has been adduced on this point. In the absence of particulars we did not know what the petitioner's case about the issuing of appeal Ex. P15 by the Mukhias was in detail. It began to be revealed after the examination of good many witnesses was over. There

is admittedly no direct or indirect evidence proving that the Mukhias signed the appeal Ex P15. The evidence that has been adduced is of two kinds. Some of the witnesses stated that some of the Mukhias admitted having issued appeal Ex. P15 and some of the witnesses stated about the circulation of that leaflet in the constituency.

Before I deal with the evidence I must point out that the election cases are of the quasi-criminal nature in which the respondent is like an accused and he should not be held guilty of any corrupt practice unless the guilt was established beyond reasonable doubt.

There are certain very important circumstances which must be kept in view while considering the evidence adduced from the side of the petitioner.

The first circumstance is that the allegation in question was not made in the petition when it was presented before the Election Commission. The petitioner's case, as disclosed from evidence, is that the leaflet Ex. P15 was widely distributed throughout the constituency by workers of the respondents No. 1 and 2. According to the petitioner it contained the names of the Mukhias who are without doubt persons serving under the State Government as is clear from the Explanation (b) of Sub-Section (8) of Section 123 of the Act. The petitioner was very vigilant during the election. He and his workers were keenly watching the activities of the opponents so much so that, it has come in evidence, that the petitioner was issuing statements to the Press and was sending letters of protest and representations to the authorities for every activity of his rivals that appeared to him to prejudice his prospects of election. It is significantly strange that the petitioner did not make this allegation in the petition and when the same was introduced by means of the amendment application it lacked the necessary particulars. I may point out that the amendment application does not contain any satisfactory explanation as to why the allegation was not made in the petition. Under the circumstances given above it would not be far-fetched to conclude that the delay might be due to the fact that the petitioner had not been able to think out the case that has now been set up and to procure the witnesses who, as I shall show later on, were tutored to depose in his favour.

The second circumstance to be noted is that none of the witnesses of the petitioner brought with him any copy of the leaflet though it was alleged that it was widely circulated in the constituency and that some of the witnesses got the same from the Mukhias. Copy of the leaflet which is marked as Ex. P15 w filed on January 17, 1953 and there is no explanation at all as to how th petitioner got that copy.

The third equally important circumstance is that word 'Mukhia' has not been added with the names given in the leaflet Ex. P15. The object of circulation of the leaflet was to influence the electors who would be more influenced if the position and status of the signatories were given. This is a common practice. Even in leaflet Ex. P15 one of the signatories was an Advocate and this was added therein after his name. Another was a teacher and word 'master' was added after his name. (*Vide* signatories Nos. 1 and 4 in the leaflet). If the Mukhias had signed the leaflet their status and position would have been given in order to impress the electors.

The fourth circumstance also needs consideration. The clear provisions of law prohibited taking assistance from the Mukhias. If it be assumed that the leaflet Ex. P15 was signed by the Mukhias there may be two reasons for such a step being taken by the respondents.' They might have obtained their signature in ignorance of the prohibition contained in the Act. If this had been so, the word 'Mukhia' would necessarily have been added after the names for the reasons given above. The case of the petitioner also seems to be against this possibility which must be over-ruled. The second alternative is that the respondent got the leaflet Ex. P15 signed and issued by the Mukhias knowing full well the legal consequences that would follow by doing so If this was so, the action taken by the respondents was nothing short of suicide. No attempt at concealing this matter was at all made. On the other hand the leaflet was extensively distributed, according to the petitioner, throughout the constituency without any discrimination. It reached all hands whether of friend or of foe. And as if this was not sufficient to furnish proof of a major corrupt practice, the respondents filed the leaflet before the Returning Officer along with the return of election expenses and showed the expenditure incurred on printing thereof in their return It is impossible to believe that the respondents would have committed such suicidal blunder.

The fifth circumstance is that there is complete absence of corroboration on such an important charge which if established would unseat the respondents and also would entail disqualification. The evidence that has been adduced from the side of the petitioner on this point is rather of mechanical type—one solitary witness for each Mukhia although in each case corroboration was possible. In each case by chance the witness comes across a particular Mukhia who makes an admission that he had signed the leaflet Ex. P15 Some of these witnesses had left the Congress prior to the election in question because of 'corruption and quarrels' in that body. They are interested and chance witnesses whose uncorroborated testimony is not at all acceptable and must be brushed aside.

Another important circumstance is that all the alleged Mukhias-signatories have been produced from the side of the respondents and they have categorically denied having signed the leaflet Ex. P15 or having circulated it. Satisfactory evidence has been adduced from the side of the respondents proving that all these mukhias were zamindars, that some of them had filed writ petitions against the abolition of zamindari and that all of them were workers of the Zamindar Party officially known as the Praja Party which had set up its own candidates for election in the constituency in question.

The first witness on the point is Balram (P.W. 33). He stated that he got the leaflet during election, had talk with Mansa Din Mukhia, got it from Murari Lal Mukhia and that Mansa Din told him that he had issued the appeal. He is not an independent witness and has grudge against the Congress. The respondents examined both Mansa Din (R.W. 29) and Murari Lal (R.W. 30). They denied having had any talk with this witness. Rameshwar (R.W. 36), Surajpal (R.W. 45) and Shranghar Singh (R.W. 53) who is a Vakil all stated that Mansa Din was worker of the Praja Party (Zamindar Party) and as such he could not have signed a leaflet of the Congress side. Murari Lal (R.W. 46) who admitted having taken the signatures on the original of the leaflet stated that he did not obtain signatures of any of the Mukhias.

Gopi Nath (P.W.34) stated that his uncle Brij Lal gave him the leaflet and that Gaya Din Mukhia admitted before him that he and others had issued it. From the side of the respondents Gaya Din (R.W.19) himself was examined. He denied what Gopi Nath witness had stated about him. He further stated that he was a worker of the Zamindar Party and that he had moved a writ petition in the High Court challenging validity of the Zamindari Abolition Act. Another witness named Badri Prasad was (R.W. 23) produced from the side of the respondent. He stated that he was a worker of the petitioner during the election. His name appears in the list of the polling agents of the petitioner. This witness, Rameshwar Singh (R.W.36) and Shranghar Singh Vakil (R.W.53) stated that Gaya Din was of the Zamindar Party. Munnu Lal (R.W. 45) stated that he did not get the signatures of Gaya Din Mukhia on the leaflet.

Nageshwar (P.W.35) stated that he got the leaflet from Arjun Singh and had talk also with Gaya Din. Both Gaya Din (R.W.19) and Arjun Singh (R.W.20) denied having had any talk with the witness. Arjun Singh stated that he worked for the Zamindar Party and that he, too, moved a writ petition against abolition of Zamindari. This witness stated that he was returning after taking medicine for his wife from Rameshwar when he had talk about the leaflet in the way. But Rameshwar (R.W.36) gave a lie direct to what the witness had said about the treatment of his wife. He said that Nageshwar's wife was not under his treatment in December 1951 or January 1952 adding that she was certainly under his treatment at the time when he was in the witness box. Rameshwar and Shranghar Singh Vakil both stated that Arjun Singh belonged to the Zamindar Party and was its worker.

Sukh Deo (P.W. 40) stated that Shambhu Ratan Mukhia gave him the leaflet and that he told him that he had issued it. Shambhu Ratan (R.W. 25) denied this. Mansa Din (R.W. 29), Rameshwar Singh (R.W. 36) and Shranghar Singh (R.W. 53) stated that Shambhu Ratan was a worker of the Zamindar Party. Shambhu Ratan stated in cross-examination that at the instance of Mahipal Singh he had told some of his tenants to vote for the Congress. The witness was treated hostile. Mahipal Singh (R.W. 31) stated that he did not ask Shambhu Ratan to canvass for the Congress. Moreover this point was not under enquiry.

So much about the four witnesses of the petitioner's side each of whom without any corroboration picked out one of the Mukhias and attempted to prove his admission. This kind of evidence even if considered by itself is not at all sufficient for proving a charge of corrupt practice and when considered in the light of the circumstances of the case it becomes wholly unreliable and I am convinced that these witnesses are got up ones and have been tutored to depose for the petitioner.

12. Much was made, from the side of the petitioner, of respondents' allegation that there were other persons of the same name in the villages concerned who had in fact signed the leaflet. In this connection it may be noted that the same plea was taken by the respondents in respect of those of the Mukhias who were alleged to have worked as polling agents. The respondents have proved beyond any doubt that those who worked as polling agents were different persons and were not the Mukhias though names were the same. Similarly their case was that the signatories of the leaflet Ex. P15 were persons different from the Mukhias though of the same name. These persons have not been examined from the side of the respondents. Some reasons have been given of their non-production. However, other evidence has been given to prove their existence. Their non-production does not prove that the case of the respondent was false. The only thing that can be said is that because of their non-production the evidence is not sufficient. It would not be fair to punish the respondents for their absence from the witness box. The fact remains if the petitioner has been successful in proving the charge. My answer is in the negative.

13. So far as the evidence of circulation of leaflet Ex. P15 in the constituency is concerned, its particulars were also not given. This was clear breach of the provisions of Section 83 (2) of the Act. The respondents were taken by complete surprised. Puttu Lal (P.W. 11), Durga Baksh (P.W. 20), Rati Rama (P.W. 26), Rama Autar (P.W. 29) and Kamla Kant (P.W. 44), in addition to the four already named were the witnesses of circulation. They do not furnish any tangible proof by producing the copies of the leaflet that they got. They are all workers of the petitioner and in the absence of any other satisfactory proof it is not possible to place any reliance on their testimony. Statement of none has been corroborated by any independent witness. So the evidence of circulation must meet the same fate as the evidence of the issuing of appeal.

14. In view of my findings recorded above, it is unnecessary to discuss the question how far the responsibility of the printing of the leaflet Ex. P15 lies on the respondents. Arguments of the petitioner's side on this point were mostly based on speculations and surmises which do not find any support from the evidence on record. The respondents have given an explanation which has been described at some length in the majority judgment. I need not repeat it here. In my judgment the explanation is not unsatisfactory. Absence of an additional written statement, after the amendment, application had been allowed was made much of during the course of arguments from the side of the petitioner. It may be noted that the Act does not require filing of any written statement, at all. However in order to confine the parties to pleadings the practice is to call for a written statement. In this case the order, dated November 28, 1953 passed on the amendment application was

> 'The contesting respondents may file any additional written statements they like by 5th December 1953 by way of reply to the amendment made in the petition.'

This order was interpreted by the respondents to mean that choice was left to them in the matter of filing of the written statement. They took some adjournments. Then there was the writ petition before the High Court. When the case came up for hearing before the Tribunal, adjournment was again sought for the filing of the written statement which was granted subject to Rs. 25 as costs while no costs were ordered when the amendment of the petition was allowed. Costs were not paid and no additional written statement could be filed. It was under these circumstances that the respondents did not file an additional written statement. In my opinion its absence does not help the petitioner to draw any adverse inference. It was for the petitioner to prove his case to the hilt. The duty of the respondents was only to give explanation as to why the expenses of the printing of this leaflet have been shown in the return of election expenses and that they have done.

15. Therefore, in view of what has been said above my finding is that the petitioner has miserably failed to establish that the Mukhias have signed the leaflet Ex. P15 and that they issued or circulated it.

The two points decided by the majority for the petitioner have been decided by me against him and hence I would dismiss the petition with costs.

(Sd.) M. U. FARUQI,
Judicial Member.

The 23rd March, 1955.

ORDER BY THE TRIBUNAL

There is a difference of opinion among the members of the Tribunal as regards the final order to be made in this case The Chairman and the Advocate Member are of the opinion that the respondents No. 1 and 2 committed the corrupt practice of Section 123(8) of the Representation of the People Act, 1951 by their obtaining assistance from four village Mukhias, Arjun Singh, Gaya Din, Mansa Din and Shambhu Ratan for the furtherance of the prospects of their election by issue of the leaflet Ex P 15 and that the respondent No 1 further committed the corrupt practice of Section 123(7) by employing for payment Ganga Prasad and Vishwanath Pande in connection with the election in excess of the prescribed number of paid workers, while the Judicial Member is of the opinion that the respondents No 1 and 2 have not committed any such corrupt practices Under Section 104 of the Act the opinion of the majority prevails and it is held that the respondent No. 1 has committed the corrupt practices of Section 123(7) and (8) and the respondent No 2 the corrupt practice of Section 123(8) as set forth above. Further, in accordance with the opinion of the majority it is held that these corrupt practices cannot be condoned under Section 100(3) of the Act and consequently the election of the respondents No 1 and 2 is declared to be void and these corrupt practices entail a disqualification in respect of these respondents in accordance with the provisions of Section 140 of the Act; also it is ordered that the parties shall pay their own costs of the case The Tribunal does not consider it necessary to name any other person as guilty of these corrupt practices No other corrupt practice, no illegal practice and no irregularity materially affecting the result of the election has been proved to the satisfaction of the Tribunal.

(Sd.) R. SARAN, *Chairman.*

(Sd) A. SANYAL, *Advocate Member.*

(Sd) M. U. FARUQI, *Judicial Member.*

The 23rd March, 1955.

ANNEXURE A

BEFORE THE COURT OF ELECTION TRIBUNAL, LUCKNOW

ELECTION PETITION No. 320 OF 1952

Sri Triloki Singh—*Petitioner.*

Versus

Sri Harish Chandra Bajpai and others—*Respondents.*

ORDERS

There are three applications before us for decision. Two of these are applications filed by Respondents 4 and 11 on 22nd January, 1953, praying that issues may be framed on the points raised by them in the additional pleas of their written statements The third is an application by the petitioner dated 27th February 1953, purporting to be under section 83(3) of the Representation of the People Act, No. XLIII of 1951 (hereinafter called the Act) praying that he may be allowed to amend the details of paragraph 7(c) of the petition by adding the words "village headmen" with their names and the fact that they worked and issued appeals for and subsequently became the polling agents of Respondents 1 and 2 The names and addresses of the village headmen are given in the application and in the remarks column is given what they did. All these applications have been seriously opposed by the Respondents 1 and 2 There have been filed objections to the applications, replies to these objections, further objections and replies to the same and various questions have been raised and argued before the Tribunal The matters raised during the course of arguments resolve themselves into the following points:—

(1) Whether instances of the corrupt practice given by Respondents 4 and 11 in the additional pleas of their written statements can be made the subject matter of issue in the trial of the election petition.

(2) Whether the instances proposed to be added can come within the scope of Section 83(3) of the Act as further and better particular.

(3) Whether it is a case in which the Tribunal would be justified in allowing these additional instances to be made the subject of investigation by an amendment of the original petition.

(4) Whether the Tribunal has power to examine witnesses in regard to the corrupt practice alleged in the applications mentioned above

I shall take up these points one by one:—

Point No. 1.—My learned colleagues have written a separate order regarding the two applications dated 22nd January, 1953, filed by Respondents 4 and 11 and I have had the advantage of reading that judgment. I have given my best consideration to the reasons given in the said judgment but I am constrained to differ from the same.

The facts giving rise to the two applications filed by Respondents 4 and 11 are given in the judgment mentioned above and I need not repeat them.

This is a difficult question and requires careful consideration. It has been held by some Election Tribunals that Respondents can not be allowed to prove facts and give instances of corrupt or illegal practices not mentioned in the election petition filed by the petitioner.

No case has been cited before us to show what course the election commission followed in the past. Some recent cases have been cited before us supporting the view of my learned colleagues and in fact I was a party to one of such decisions *i.e.* Election Petition No. 319 of 1952 Sri Khushwaqt Rai *Vs.* Sri Karan Singh and others. The same question has now been argued again very fully and very ably by the learned counsel for the parties in this case and I have reconsidered the matter and I feel that the reasoning given in the judgement of the cases referre to above is not correct. The reasoning given in the above cases can be summarised as follows. Section 80 of the Act says "No election shall be called in question except by an election petition presented in accordance with the provisions of this Part (VI). Under Section 83 of the Act the petition shall contain the material facts on which the petitioner relies, and therefore any additional material facts given by the Respondents in their written statements can not be the subject matter of an enquiry by the Tribunal. This is the entire reasoning of these judgments. I shall give below my reasons to change that view which I once held

For a correct undersanding of this question it is necessary to refer to the procedure prescribed by the Act for the trial of an Election Petition. As soon as an Election Petition is filed the election of the returned candidate is called in question, and the machinery of law is set in motion. Section 90 of the Act prescribes that the Tribunal shall cause a copy of the petition together with a copy of the list of particulars referred to in sub-section (2) of Section 83 to be served on each Respondent and t[illegible] the Official Gazette, and at any time within 14 days after such [illegible] other candidate shall, subject to the provision of Section 119, [illegible] joined as a Respondent. Thus it is incumbant on the Tribunal to serve notice of the petition on the Respondents and the Tribunals as a rule call upon the Respondents to file written statements within the time fixed by the Tribunals. Written statements are then filed by the various Respondents, some supporting the petition and some opposing it. Thereafter the Tribunal settles issues and decides on what points evidence should be taken so as to have a fair and effectual trial of the petition There is nothing in the Act which prohibits the Tribunal from considering and taking evidence of the facts stated in the written statements. It is argued that the Election Tribunal has to try and decide the petition as presented before the Election Commission and sent to the Election Tribunal for decision, and the Tribunal is precluded from going into any matter not contained within the four corners of the petition. It seems to me that this is not a correct approach and is not a correct view of the law. An Election Petition can be filed by any candidate or any elector calling in question the election. As soon as an election is called in question the whole matter of the election of the returned candidate is at large and it is the duty of the Election Tribunal to decide all allegations of corrupt or illegal practices relating to the said election and it is for this reason that all the Respondents are called upon to file written statements. There is no provision in the Act under which the Tribunal calls upon the Respondents to file written statements; yet this is invariably done in every case because of the provisions of the Civil Procedure Code. If I were to compare the proceedings under the Act and under the Civil Procedure Code, the presentation of the Election Petition before th-

Election Commission is like the presentation of a plaint before the Munasarim in the district court The Munasarim makes a report about court fees, jurisdiction etc and places the plaint before the court and the court issues notice to the defendants calling upon them to file their written statements and the entire procedure of the Civil Procedure Code applies Similarly, the Election Commission receives the petition and after considering the question of the maintainability of the petition sends the petition to the Election Tribunal which is then seized of the case and proceeds under the C P C to call upon the Respondents to file their written statements and the entire procedure of the Civil Procedure Code applies with this difference that if the Act or the rules under the Act specifically provide a procedure different from the C P C, the provisions of the Act will be applicable and not the C P C, so far as that matter is concerned If this view of the law is correct then the entire C P C will apply in an election case in the same way as the C P C applies in the case of a suit The provisions of the C P C can not be excluded by implication

The procedure mentioned above is not unknown to law For example, a shareholder in a company files a petition for the winding up of the company On the petition being filed, notice is published in the newspapers and the Official Gazette fixing a date of hearing On that date other shareholders have the right to appear and oppose or support the winding up petition Every party appearing is heard and every party has the right to give evidence by affidavit or otherwise and the company court does not exclude any evidence This is because as soon as a petition for winding up is filed it is in the interest of all the shareholders and the entire affairs of the company are gone into Similar examples can be given of other proceedings These and similar proceedings are of a representative character and once the court is moved by any party the whole question is open

It has been argued that the Election Tribunal has no power to decide matters between the Respondents *inter se* and it is not permissible in law It seems to me that this is not correct as a universal rule of law Courts do decide matters in controversy between co-defendants if there is a real contest between them and it is necessary and such decisions are even *res judicata* This should not deter us from going into matters of real controversy between Respondents in an election petition and it is necessary to adjudicate upon them in order to decide the election petition and determine whether the election of the returned candidate is good in law

There is another aspect of the case which is necessary to consider In every election a large number of candidates stand for election and each watches closely the acts of the others It is, therefore, possible that some of the corrupt or illegal practices committed by the returned candidate may not be known to the petitioner but may be known to other Respondents who support the petition For example, the corrupt practice of obtaining assistance of Government servants for the purpose of the election may be alleged by the petitioner and he may give some instances The Respondents may know other instances of obtaining assistance of Government servants for the purpose of the election and they give these instances in their written statements which they have been called upon to file and which they have filed within the time allowed by the Election Tribunal There is no reason why these instances should be excluded from the consideration of the Tribunal There is no point in ordering the petitioner to make them parties to the petition on pain and penalty of the petition being dismissed in case they are not made parties and further in calling upon the Respondents to file written statements and then turning round and saying that the Respondents are mere spectators and they can not act in the case It seems to me that allowing the Respondents to prove the facts alleged by them in their written statements does not prejudicially affect the returned candidate He is not taken by surprise and has ample opportunity to meet the case as set up in the written statements It is after the written statements are filed that issues are framed and date is fixed for the hearing of the case

It is argued that the election law is technical and the provisions of the Act are to be strictly interpreted and an election should not be lightly set aside It is true that the law of election is technical but it does not exclude fair and effective that of a petition and unless there is a provision in the Act specifically excluding reception of evidence tendered by the Respondents in support of the allegations contained in the written statements, I would be reluctant to restrict the enquiry to the allegations contained in the petition alone The petition calling in question an election is not a suit between the petitioner and the returned candidate but is a matter affecting the whole constituency and it is the duty of the Tribunal to see that no person who is guilty of committing a corrupt practice should sit as an honourable member

of an Assembly or Parliament. In this particular case there is *prima facie* documentary evidence to show that village headmen were employed as polling agents and they also signed leaflets to further the prospects of the election of Respondents 1 and 2. I am, therefore, of the opinion that the Respondents 4 and 11 who have made the said allegations of the corrupt practice in their written statements should be allowed to prove these facts by calling witnesses.

I have already quoted above section 90 of the Act which provides that "at any time within 14 days after such publication any other candidate shall, subject to the provisions of section 119, be entitled to be joined as a respondent". It is necessary to pause here to consider why a candidate who desires to be made a Respondent should give security as provided in section 119 of the Act. If he is to be a mere spectator like the other Respondents he should not be called upon to give security. The Legislature has provided for security for costs in the case of such Respondent because, in my view, he is entitled to give evidence of material facts to support the petition or to controvert the facts in the petition. Section 120 of the Act says "Costs including pleaders' fees shall be in the discretion of the Tribunal". Therefore costs mean costs for examining witnesses and pleaders' fees. I have no doubt in my mind that a candidate who applies to be made a Respondent under section 90(1) of the Act gives security because he is entitled to produce witnesses. Such security is not demanded from the other Respondents because the Act does not provide for it, but it does not prevent them from producing evidence.

It is true that if Respondents are allowed to give evidence it will enlarge the scope of the enquiry and may cause embarrassment to the returned candidate. It is the duty, however, of the Tribunal to see that there is a full fair and effective trial of the petition challenging the election and if in the opinion of the Tribunal the evidence produced to be tendered by the respondents is not material for the decision of the petition or this evidence is sought to be given on frivolous grounds or with a view to delay the proceedings, the Tribunal may refuse to record such evidence, [*vide* section 90(2) proviso]. It seems to me that this provision of law will remove the embarrassment to the respondents in any particular case. During agrument the learned counsel for the Respondents has drawn our attention to section 97 of the Act and it is argued that the Respondents have this limited right of recrimination and it is for that purpose that they are made parties. This argument does not seem to be correct. When in an election petition a declaration is claimed that a candidate other than the returned candidate has been duly elected the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election. In the proviso to section 97(1), the party proposing to give such evidence has to give security under section 117 because it is a new petition against a person who is alleged to have been duly elected. Section 97(2) provides for particulars to be given and the petition to be signed and verified as required by section 83 of the Act. Thus it is clear that security is demanded wherever evidence is proposed to be tendered and, therefore, any candidate who desires to be Respondent under section 90(1) has to give security for costs. Security is not demanded from the Respondents who are necessary parties because they can always be made liable for costs and that is a sufficient safe-guard against any abuse of the right to give evidence in the case. Section 99(1) (b) provides for fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid. For these reasons I am of the opinion that Respondents to an election petition can allege material facts on which they support the petitioner who has challenged the election and this will not cause embarrassment to the returned candidate and he can not be taken by surprise.

This question can not arise under the English statute. The Representation of People Act, 1949 (12 and 13, Geo. the VI Ch. 68) by section 108(8) provides that the member whose election or return is complained of is the Respondent. The Indian legislature has made a departure from this and requires that all nominated candidates shall be joined as Respondents to the election petition and these Respondents have the right to appear and, in my view, give evidence in support of the allegations in their written statements.

Under the English Law it is the duty of an election agent to report any Election offences committed by a candidate to the Director of Public Prosecutions, Schofield in his book on Parliamentary elections (1950 edition), page 223, says "the duty of the agent is to secure the election of his candidate. His opponents will watch all his actions carefully and he must do the same with his opponents. If an agent finds his opponent breaking the law he should record carefully the

facts and obtain statements from all witnesses as early as practicable and if the offence is grave he should report the matter to the Director of Public Prosecutions." Under section 123(6) of the English Act, the Director of Public Prosecutions shall without any directions from the court cause any person appearing to him to be able to give *material evidence as to the subject of the trial* to attend the trial and shall, with the leave of the court, examine him as a witness.

This provision has been made to ensure freedom and purity of elections. It is the duty of the Director of Public Prosecutions to watch the case on behalf of the public. I have quoted the above provisions of the English law not to use it as authority but only to show the nature of an election petition and that when an election is challenged it is a matter which affects the whole constituency, and in the absence of a Director of Public Prosecutions in India, the Respondents who have watched the actions of the returned candidate should be allowed to give evidence of any corrupt or illegal practice of which they have special knowledge so that the purity of the election may be maintained.

I would, therefore, grant the applications of Respondents 4 and 11 and allow them to give evidence of material facts alleged by them regarding the corrupt and illegal practice challenging the election of the returned candidate which is the subject of the trial.

Point No. 2.—In order to appreciate this point it is necessary to refer to paragraph 7(c) of the petition. The first sentence is as follows.

> "That the Respondents Nos. 1 and 2 could in furtherance of their election enlist the support of certain Government servants."

Thereafter, the petitioner mentions how that support was obtained from some Government servants. It is argued by the learned counsel for the petitioner that the charge against the Respondents 1 and 2 was that they 'could' enlist the support of Government servants and this addition of the village headmen is not a new charge of corrupt practice but is only an amplification of the corrupt practice already made the subject matter of a charge. The learned counsel for the Respondents has argued that the amendment seeks to add new instances of the corrupt practice and each new instance is a new charge.

On the special facts of this case, I am unable to agree with the contention of the learned counsel for the Respondents. The substantial charge of obtaining assistance from persons serving under the Government is there in paragraph 7(c) of the petition. The petitioner has further given some instances of how the assistance of Government servants was obtained and by this application he seeks to give evidence of the assistance obtained by Respondents Nos. 1 and 2 from other Government servants not mentioned in the petition. In my opinion it is an amendment particulars by adding more instances on which the petitioner seeks to give evidence to support the substantial charge already made. These instances are nothing more than further and better particulars in regard to the charge already referred to in the petition and in my opinion it would be improper to exclude evidence on this point and it will not ensure a fair and effectual trial of the petition. I am, therefore, prepared to allow the amendment application under section 83(3) of the Act.

Point No. 3.—Regarding Point No. 3, namely, whether the original petition can be amended by the addition of these instances I am of the opinion that on the facts of this case amendment should be allowed.

I am aware that various election Tribunals have held that it is not possible in any case to have the original petition amended except as provided under section 83(3), which by the way is not really a provision for amendment of the petition but one for giving further and better particulars. I need not refer to the various decisions of the different Tribunals. In fact, I was member of the Tribunal in some of these cases. I have since then reconsidered the matter in view of the able arguments by the learned counsel of the parties and I have fully considered the reasons given by the High Courts of Bombay, Madras, and Patna and I respectfully agree with these High Court decisions. The said High Courts have held that amendment of the petition can be allowed under Order VI rule 17, C.P.C. The cases that were cited no doubt related to amendments of a formal nature only and some Tribunals have also ordered amendment of a petition provided it was of a formal nature. It is argued that if the amendment sought is not of a formal nature but is a substantial one, the amendment can not be made. It seems to me that there is error in this reasoning. When once you invoke the aid of Order VI rule 17, C.P.C., you cannot stop short and say thus far and no further. The entire provision of Order VI rule 17 applies and the original election petition can be amended provided a proper case is made out.

It has been argued by the learned counsel for the returned candidates that there has been undue delay, There is delay no doubt but in the circumstances of this case, we can condone it. The Respondents 4, 9 and 11 filed their written statements in December, 1952 The petitioner thereafter filed his replication on 16th January, 1953. The Respondents wanted that issues may be framed on the allegations made by them in their written statements The Tribunal did not do so and issues were framed on 17th January, 1953. Thereupon Respondents 4 and 11 filed applications on 22nd January 1953 praying that issues may be framed on the allegations made by them in their written statements and those applications were still pending. The replication filed by the petitioner relied on the allegations made in the said written statements. The whole matter was placed before the Tribunal when the present application was filed under section 83(3) of the Act. Under these circumstances, I would allow the amendment of the petition by adding the particulars referred to in this application.

It has been argued by the learned counsel for the returned candidates that the amendment prayed for introduces a new charge inasmuch as each new instance is a new charge and further the returned candidates have acquired a right and a new petition to call in question the election is barred by time These contentions of the learned counsel are not correct. The amendment proposed does not introduce a new case. I have already said in the earlier part of the judgment that the new instances of the corrupt practice are only an amplification of the substantial charge already contained in the petition and it does not introduce a new case at all. The argument regarding limitation is also without force. The returned candidate's right to the seat has been challenged within time. The proposed amendment does not change the nature of the case. It only seeks to give evidence of a new instance and limitation cannot be pleaded to prevent the petitioner from giving evidence in support of a particular charge already made The power of amendment under Or. VI r. 17 is very wide and all amendments can be allowed to be made as may be necessary for the purpose of determining the real questions in controversy between the parties. I may usefully quote here a passage from the judgment of their Lordships of the Privy Council in Ma Shwe Mya Vs. Maung Po Hnaung, (22) 9 AIR 1922 P.C. 249 (250, 251): their lordships of the Privy Council observed as follows:

> "All rules of Court are nothing but provisions intended to secure the proper administration of justice and it is therefor essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised; but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change by means of amendment, the subject-matter of the suit."

I may also quote the observation of Lord Buckmaster in Charan Das Vs. Smir Khan (21) 8 AIP 1921 P.C 50 (51, 52), regarding the question of limitation, Lord Buckmaster in delivering the judgment of the Privy Council observed as follows:

> "That there was full power to make the amendment cannot be disputed and though such a power should not as a rule be exercised where its effect is to take away from a defendant a legal right which has accrued to him by lapse of time, yet there are cases where such considerations are outweighed by the special circumstances of the case".

I am, therefore prepared to allow the application under section 83(3) even if it amounts to an amendment of the original petition

Point No. 4.—Coming to point No. 4, it is open to the Tribunal in proper cases to summon and examine *suo motu* any person whose evidence appears to it to be material. (*Vide* section 92 of the Act).

In this particular case it has been brought to our notice by these applications that the returned candidates obtained assistance from village headmen for the furtherance of the prospects of their election It is alleged that they issue leaflets under the signatures of village headmen and further village headmen acted as their polling agents Particulars of the same are given in the applications. The leaflets referred to therein are on the record The relevant polling agents forms are also on the record. The only evidence necessary is to prove that these persons were village headmen and even this fact can be proved by documentary evidence. If the returned candidates are questioned in the witness-box they will not be able to deny on oath that these polling agents were village headmen. It will be a matter of admission and this admission cannot be ignored. If the allegations

contained in the applications are true, the returned candidates are guilty of a major corrupt practice as defined in section 123(8) explanation (b) and it is our duty not to condone this and to exclude evidence on this point.

In dealing with point No. 1 I have already referred to Sec. 123 of the English Act. Section 123(2) of the said Act reads as follows "On the trial a member of the election court may, by order under his hand, require any person who appears to him to have been concerned in the election to attend as a witness and any person refusing to obey the order shall be guilty of contempt of court." This power given to a member of the election court in England corresponds to the power given to the tribunal in India to examine *suo motu* any person whose evidence appears to him to be material. Of course such material evidence must be related to the subject of the trial and must be material for the decision of the matter in controversy in the case. It cannot be said in the present case that the evidence proposed to be given by the petitioner or Respondents 4 and 11 regarding the assistance taken by the returned candidates from village headmen for the furtherance of the prospects of their election is not material, for if proved it will go to the very root of the case.

In dealing with point No. 1 I have also discussed the nature of an election case and the policy of the law. It is in the interest of the State that there should be freedom and purity of election guaranteed to the citizens of the State. It will be a sad day for democracy if persons who have committed corrupt or illegal practices in their election can take shelter behind technicalities and say that though they have committed corrupt practices, they can not be touched.

I am, therefore, of the opinion that the Tribunal cannot connive at or condone this corrupt practice, in fact, it is our duty to take material evidence in this matter and decide the case on that evidence also. Otherwise it will violate the sanctity and purity of election and will result in failure of justice.

From whatever point of view we may look at this application, the matter should be enquired into and should not be excluded from evidence on any technical ground.

(Sd.) A. SANYAL,

Advocate Member.

ORDER

I have seen the order proposed to be made in this case by my learned colleague, Sri A. Sanyal, Advocate Member. I fully agree with his view that the petitioner's application for amendment should be allowed either under section 83(3) of the Act as an amendment of the particulars which ought to have been given in a separate list appended to the petition but have actually been incorporated in the petition itself, or under Or. VI rule 17 C.P.C. as an amendment of the election petition itself, although I am unable to subscribe to his view that independently of the election petition also the respondents Nos. 4 and 11 are entitled to raise by this written statements the question of village headmen having assisted the respondents Nos. 1 and 2 in furtherance of the prospects of their election or that the Tribunal is empowered under section 92 of the Act to take cognizance of this matter and to call witnesses on this point *suo motu*. My reasons for the view that the respondents 4 and 11 can not be allowed to agitate this matter independently of the election petition have been stated already in the order made by my learned colleague, Sri M. U. Faruqi, Judicial Member, and myself in this case on 13th November, 1953; and as far as the power of the Tribunal under section 92 of the Act, to summon and examine witnesses *suo motu* is concerned I am of the view that it is restricted to the relevant points in issue between the parties and can not extended further. So far as the amendment sought by the petitioner is concerned I have no doubt at all in my mind against allowing it. I fully endorse the reasoning of my learned colleague the Advocate Member in this behalf, and I see no valid legal objection to this amendment; the amendment is of a very vital nature, and the facts and circumstance of the case require that it should be allowed and should not be refused on any technical ground.

(Sd.) R. SARAN,

Chairman.

The 28th November 1953.

ORDER

The petition in this case made an application at a comparatively late stage for amendment of the petition praying that addition of a new charge of corrupt practice might be made therein. The application was opposed by the contesting respondents who were successful candidates at the election. We heard long arguments from both the sides on different dates. My learned colleagues are going to allow amendment of the petition. The legal and factual points involved in this matter are of great importance because of which I think it necessary to set out my views separately as, I regret, strongly differ from the view taken by my learned colleagues.

Matter in controversy is to be looked at from two points of view—legal and factual. I shall try to show that under the law no new instances of corrupt practice not given in the petition cannot be entertained either independently or under the garb of 'further and better particulars'. I shall also show that the application for amendment, having been made at a very late stage after the expiry of the period of limitation, cannot be allowed. I take up the last point first. Consideration of this point will need some chronological details.

Nominations of the candidates in the constituency in question took place on November 24, 1951 after which date work of canvassing would have been started by each nominated candidate and work of each must have been watched by the others. Polling took place on January 31, 1952. As a result of counting of votes the respondents 1 and 2 were declared elected and the petitioner, along with others, was defeated. The present election petition was filed on June 10, 1952—over four months after declaration of the result of election and on the last date of longer period of limitation as provided in clause (b) of Rule 119 of the Representation of the People (Conduct of Elections and Election petitions) Rules, 1951 (hereinafter to be called the Rules).

The petition is a long and fairly well—considered document in which every possible irregularity, illegality and corrupt practice is alleged to have been committed by the successful candidates (the respondents 1 and 2 hereinafter to be called the Respondents) who opposed the allegations made in the petition. Issues were framed in the case on January 17, 1953. Some of the issues (Nos. 1 to 4 and 13) related to certain legal or preliminary points and by consent of the parties arguments were ordered to be heard on those issues prior to the recording of evidence in the case. Some date in the beginning of February was fixed for arguments but ultimately hearing of arguments was started on February 25, 1953. The arguments were opened from the side of the Respondents and were concluded the same day when hearing was started but the same could not be finished when the court rose for the day. Arguments of the Petitioner's side were to be continued on February 27, 1953.

It was on the last-mentioned date that the Petitioner presented the amendment application which is subject matter of consideration at present. There was, after that date, a long gap because, having been appointed Judicial Secretary, Sri D. N. Roy the Chairman resigned from the Tribunal and appointment of the new Chairman took some time. Ultimately the case came up for hearing at Lucknow on August 25, 1953. Both the parties addressed the Tribunal again on issues 1 to 4 and 13 and also on the amendment application of February 27, 1953. Arguments were heard from August 25 to 28 and also on September 15, 1953 and on close of the arguments the Tribunal reserved judgment. During the course of arguments one of the point pressed from the side of the Respondents, was a sence of verification in the amendment application of February 27, 1953 and also the absence of any affidavit explaining as to why the allegation sought to be added was not made in the Petition. According to the Respondents' learned counsel these defects were sufficient for throwing out the amendment application. The Petitioner felt the pinch and one day after close of the arguments of the parties *i.e.*, on September 16, 1953 he moved another application seeking amendment of the amendment application of February 27, 1953 by addition of the verification clause in the said application. He also filed an affidavit purporting to be one explaining the delay but as I shall show later on the said affidavit does not at all explain as to why the allegation was not made in the petition itself.

Having given history of the controversy and having shown how the Petitioner took advantage of the arguments of the Respondents' side from one stage to another I proceed first to discuss whether verification of the amendment application of February 27, 1953 was necessary and also whether there should have been an affidavit explaining the delay. I shall then proceed to consider whether

the application of September 16, 1953 should be entertained and whether it removes the defects pointed out from the Respondents' side.

Verification of the Amendment Application.—All the pleadings of the civil suits and the petitions and lists in the election cases must be verified. Absence of verification of the pleadings may not be fatal defect in civil cases but this is not so in case of verification of the petitions and lists in the election cases. A comparison of the relevant provisions of Or. VI r. 1 of the C.P.C. with the provisions of sections 81 and 83 of the Representation of the People Act, 1951 (hereinafter to be called the Act) will clearly show the difference. The latter provisions are mandatory. Sub-sections (1) and (2) of section 83 of the Act make verification incumbent and if section 80 is read with the aforesaid two sections of the Act it will become manifest that want of verification is fatal. Though, it is held by some courts that formal defects in verification can be disregarded or can be cured by amendment, the case of complete absence of verification stands on a different footing. An unverified petition is no petition at all within the meaning of section 80 of the Act. Same view was taken by election Courts in good many cases. I may cite two such cases.

One is the Election Petition No. 256 of 1952—Radhay Syam *Vs.* Chandra Bhan Gupta—published in the U.P. Gazette Extraordinary dated May 29, 1953. In this case some schedules were verified but the Tribunal came to the conclusion that the verification was made by the petitioner without knowing the contents of the said schedules. It was held that it was no verification at all and also that the consequent absence of verification was fatal. An amendment application was made to supply the verification but it was rejected.

The decision of another case is published on page 2263 of the Gazette of India Extraordinary Part I dated October 10, 1952. In that case the petitioner was not allowed to amend the petition by supplying verification of the list.

It is thus clear that cases of complete absence of verification stand on a footing different from the cases of defective verification. Complete absence of verification is fatal.

Now, what is true for the petitions or the lists must necessarily be held to be true for every new addition that is sought to be made in the petition. In the case before us the petitioner wants to add a new instance in the petition. The amendment sought should have been verified as is required under sub-section (2) of section 83 of the Act. Its absence is fatal and this ground alone is sufficient for rejecting the amendment application of February 27, 1953.

Application of September 16, 1953.—On the principle laid down in the aforecited two decisions this application should also be rejected. Moreover even on facts as noticed above the application for amendment of the amendment application must be rejected. No valid reason is shown as to why the omission of verification was made in the application of February 27, 1953.

An ingenuous argument was advanced in this connection by the learned counsel of the Petitioner in the reply to the argument of the Respondents' side about absence of verification. It was contended that the application of February 27, 1953 should be treated only as an application seeking permission of the court for amendment and that the application of September 16, 1953 should be treated as amendment application. The suggested procedure is never followed by the courts. An amendment application always embodies verification clause in it. Same is the case with the application of February 27, 1953 in which the passage sought to be added is given *in extenso* and the prayer at the end of the application is for addition of that passage in the Petition. The Petitioner's own applications dated September 16 and October 1, 1953 falsify the aforesaid contention because in those applications the application of February 27, 1953 is described as an amendment application and not as an application seeking permission for presenting an amendment application.

The Affidavit.—This brings me to the question of affidavit. In order to bypass the real point the petitioner in his different applications and also in the course of arguments tried to explain the delay that occurred between the filing of the petition and the presentation of the application of February 27, 1953. What was to be explained was the reason as to why the allegation sought to be added was not given in the Petition itself. Sometimes certain new facts are discovered which it was not in the power of petitioner to find out at the time of presentation of the petition the same may be allowed to be added provided sufficient cause of delay is shown and also provided the allegation sought to be added can be introduced under the law. In the present case no such thing has

been said by way of explanation What is said in the application as well as in the affidavit is that the Petitioner had the facts in his mind, that he did not specifically mention the same in the petition and also that after hearing arguments of the side of the Respondents he was advised to make the allegations specifically This is no explanation at all. Moreover it appears false on the face of it If the petitioner had in his mind the allegation of a major corrupt practice he would not have failed to mention the same in the elaborately drawn up petition Necessary inference is that the Petitioner failed to make the allegation in the petition and that he is unable to assign any valid reason for his failure to do so It is, therefore, clear that even the belated affidavit does not in any way help the Petitioner It was a hotly contested election in which each party must have been watching activities of the other If village headmen worked as polling agents of the Respondents the fact must have come to the knowledge of the Petitioner during or soon after the election The petition was filed taking advantage of the longer period of limitation During this time material must have been collected which, as is clear from the detailed petition, was fully utilised There is, however, no valid explanation as to why the new allegation was not embodied therein The explanation that has been given in the affidavit is no explanation at all. In fact it is clearly false The case is of pure and simple gross negligence for which there is no explanation at all

Use of Courts Discretion.—The question, therefore, arises as to whether under the peculiar circumstances of this case stated above, we should or should not exercise our discretion in favour of Petitioner if we are, at all, possessed of the discretion to amend the petition. There is no provision in the Act for amendment of a petition It is to be found whether or not the provisions of the Code of the Civil Procedure embodied in r 17 of Or VI will apply in this case assuming that the same apply to the farthest limit in the election cases just as they apply in the cases directly governed by that Code

While something is left to be done according to the discretion of the authority on whom the power of doing it is conferred, the discretion must be exercised honestly and in the spirit of the statute, otherwise the act done would not fall within the statute (Maxwell Interpretation of Statutes Ninth Edition, page 129).

The main principle guiding the discretion of the court in granting or refusing amendment is that no amendment should be allowed if it causes injustice to the other side (A I R 1929 Cal. 991 at 993).

Lastly it is one of the necessary conditions for the exercise of the court's discretion in allowing an amendment, that the applicant has acted in good faith (A I R 1922 Cal. 255 at 256).

Thus it is clear that there are three main tests for finding whether the discretion was rightly and judicially exercised which are as follows.—

(1) Discretion should be exercised in the spirit of the statute conferring it.

(2) It should be exercised without causing injustice and injury to the other side

(3) In moving the court to exercise discretion the applicant has acted in good faith

As regards the first point, the question is spirit of which statute should be kept in mind while exercising discretion in a case like the present one The provisions of the Civil Procedure Code are made applicable to election cases under sub-section (2) of section 90 of the Act Therefore ultimate authority for application of provisions of the Code emanates from the Act It naturally follows that the Tribunal should exercise discretion having regard to the spirit of the Act Spirit of the Act can be judged from a perusal thereof It is a special enactment brought on the statute book for a special purpose It envisages speedy disposal of election disputes. Proceedings of the election cases being of quasi-criminal nature it is enjoined that the respondent (the successful candidate) should know all the charges levelled against him at the earliest possible occasion He should not be unnecessarily harassed by addition of new charges from time to time during the course of trial In the present case spirit of the enactment is bound to be violated if an amendment of the petition of the nature stated above is allowed.

Second point set out above is very important. It is sometimes said that in the election disputes the whole constituency is interested and, therefore, it is argued, all the charges against a successful candidate should be thoroughly

investigated. This is true so far as it goes But it is also the duty of an election court to see that the successful candidate is not unnecessarily harrased and that he is given full benefit of the rights that have accrued to him by operation of law There is no denying the fact that bar of limitation is a valuable right and a party should not be deprived of that right unless existence of very special circumstances is proved.

The object of Or VI r. 17 of the C.P.C. is to get at any try merits of the case and to do substantial justice *'between the parties.'* (These words are taken from the rule 17 itself). No amendment should be allowed which will work injustice to *one of the parties.* If a grossly negligent and extremely careless party sleeps over the matter so much so that certain valuable rights accrue to the other party, it would not be fair to disregard the negligence although that will result in depriving the other party of the valuable right to which it has become entitled I support of this view I may cite at least one case out of many. It is A I R 1941 Allahabad 74 in which the plaintiff knew that the plaint was defective. He was given opportunity to remove the defect but he did not avail of it. Subsequently he applied for amendment. But in the meantime right to plead bar of limitation had accrued to the defendant. The court rejected the application for amendment on the ground of negligence of the plantiff and of the accrual of a valuable right to the defendant *i.e.*, the right to plead bar of limitation.

Article 329(b) of the Constitution lays down as to how an election can be called in question. According to that Article it cannot be called in question except by an election petition presented to such authority and *in such manner* as may be provided by any law made by the appropriate Legislature. The Legislature passed the Act section 80 of which says that no election shall be called in question except by an election petition presented in accordance with the provisions of the Act. Section 81 enjoins that the grounds on which election is challenged shall be specified in the petition and that it (the petition) shall *be in such form* and shall be presented *within such time* as may be prescribed. Section 83 defines the form and Rule 119 of the Rules prescribes the time. A perusal of the aforesaid provisions clearly shows that grounds challenging the elections should be given in the petition which shall be drawn up in the manner laid down in section 83 of the Act and which shall be presented within such time as is prescribed under Rule 119 aforesaid. Section 83(1) describes what should be the contents of a petition It should contain a concise statement of the material facts on which the petitioner relies, section 83(2) provides for a separate list of particulars which shall accompany a petition and section 83(3) lays down the manner in which particulars of the list can be amended.

Thus it is clear that every new instance of a corrupt practice is a separate charge which should be made in the petition or a separate petition can be filed embodying that charge. But a separate petition shall again be governed by section 80. Therefore the question of presentation before the Election Commission and also the question of limitation will come in. For the same reason it cannot be added in the petition already filed. The new instance sought to be added in the petition cannot, therefore, be accepted because valuable right has accrued to the Respondents of which they cannot be deprived.

There is another hurdle. It is to be seen whether the Petitioner has come with clean hands. As said above there is no justification for not making the allegation in the Petition itself. I have shown above that the Petitioner did not make any attempt to explain this delay. The explanation that he has given is totally false. He tried to fill in the gaps from time to time after hearing arguments of the opposite side. I do not find any valid reason for giving a long rope to the Petitioner at the cost of the valuable rights that have accrued to the Respondents. The law courts have refused to exercise their discretion in favour of one who does not come with clean hands. He who seeks equity must come with clean hands. The view stated above finds support from the case of the Election Petition No. 256 of 1952—Radhay Shyam *Vs.* Chandra Bhan Gupta published in the U.P. Gazette Extraordinary, dated May 29, 1953, page 10.

Therefore, in view of what is said above I find that even if Or. VI r. 17 of the C.P.C. be held applicable, it would not be just and fair to exercise our discretion in favour of the Petitioner by allowing amendment of the Petition.

Application of Section 83(3) *of the Act.*—To come to closure quarters, it is to be found whether the amendment could be allowed under the provisions of the Act. It may be noted that by the application of February 27, 1953 the Petitioner seeks addition of a new charge in the Petition proper by way of amendment and he specifically mentioned in the said application that he was

seeking amendment under sub-section (3) of section 83 of the Act. That sub-section is meant only for the amendment of the particulars given in a separate list accompanying the petition proper. Therefore obviously those provisions cannot apply by any stretch of reasoning and interpretation to a case in which amendment of the Petition is sought.

However assuming for the present that those provisions apply even when amendment of the petition is sought, it is to be seen as to whether the new instance sought to be added comes within the four corners of the aforesaid sub-section. The said sub-section is in two parts namely—

(1) The Tribunal may, upon such terms as to costs and otherwise as it may direct at any time, allow the particulars included in the said list to be amended.

or

(2) The Tribunal may order such further and better particulars in regard to any matter referred to therein (i.e., in the particulars) to be furnished as may in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition.

It is, thus, clear that the Tribunal may allow amendment of the particulars given in the list that may be prayed for by the petitioner and it can also act *suo motu* by ordering the furnishing of further and better particulars as may in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition. It is important to note that in both the cases the powers given are confined to the amendment of the particulars given in the separate list accompanying the petition proper. An election court cannot proceed beyond that i.e., it cannot assume the authority of permitting a petitioner to add a new charge which has not been given either in the list accompanying the petition or in the petition proper.

The learned counsel for the Petitioner based his arguments on the word 'further' which he wanted to distinguish from 'better'. His object was to show that use of the word 'further' envisaged new instances as well. This reasoning is not correct. Words 'further and better' are joined with the conjunction 'and'. This means that 'further particular' should also be 'better'; and 'better' particular connotes comparison with some particular already given in the list. Naturally new instances cannot be said to be 'further and better' particulars. This being so, use of word 'further' in sub-section (3) does not help the Petitioner. Some result will follow if the matter is looked at in another way. The word 'further' occurs in that part of the sub-section which empowers the Tribunal to act *suo motu* and the Tribunal for obvious reasons cannot take any notice of anything beyond the record. It can order further and better particulars only in respect of those matters which already find place in the list or in the petition. The necessity for further and better particulars must emanate from the material already existing in the petition or the list. The Tribunal cannot be expected to act *suo motu* in respect of some matter outside the record i.e., it cannot order addition of new instances of corrupt or illegal practice. Even the passage 'for the purpose of ensuring a fair and effectual trial of the petition' cannot be read bereft of the limitation and restriction already mentioned.

However, in fact, the case falls under the first part of the sub-section because the Petitioner has applied for amendment. Even that part relates to the amendment of the particulars already given in the list accompanying the Petition. It does not contemplate admission of new instances.

The addition of the allegation that village headmen acted as polling agents of the Respondents cannot, therefore, be called the furnishing of 'further and better particulars' or amendment of 'the particular *included* in the said list' within the meaning of sub-section (3).

The Petitioner made an attempt to insert the new allegation in paragraph 7(c) of the Petition in order that he might insert the new allegation in the garb of 'further and better particulars'. As a matter of fact that paragraph is complete in itself and its very perusal leaves no room for doubt that anything was left out. It contains two instances which have got nothing to do with the new allegation. Three questions arise in this connection.

(1) Either the new allegation is totally a new charge having no mention whatsoever in any form in the petition or in the list.

(2) or it is an amplification of a 'particular' already given in the list or in the petition.

(3) or it amounts to the addition of one more instance in the two instances of the charge already given.

The present case admittedly does not come either in (1) or in (2) above. According to the argument of the petitioner's side, an allegation of the corrupt practice under clause (8) of section 123 of the Act was made by stating that 'the respondents 1 and 2 could in pursuance of their election enlist support of certain Government servants'. Two instances were given in the petition. He, by giving amendment application, wanted to add one more instance. This is what is said from the side of the petitioner. The matter, therefore, depends upon the meaning of the word 'particulars' which obviously means the details or description of certain corrupt or illegal practice which is mentioned in the concise statement of material facts given in the petition. Each new instance constitutes a fresh charge. The new instance cannot be said to be the furnishing of further and better particulars already given in the list.

The election courts in India from 1923 onward, in good many cases, held this view. The provisions of section 83 are the *verbatim* reproduction of the old rules which had been in force since 1923. There are numerous old decisions of the election courts which may usefully be cited in support of the view that I have taken. Even in England where the procedure in respect of amendment of particulars is different and is not governed by the same rules as those which obtain in India the view that I have taken was taken by Bruce J. in the Lancaster case (5 O'M and H 41). In India the Amritsar City case (2 Hammond's Indian Election Petition 26) and the Kistna case (3 Hammond's Indian Election Petitions at 152) are to the point. In the last-mentioned case question for determination was whether the petitioners were entitled to add new instances by way of further particulars to the general charge of corruptly employing District Board servants. In a well-considered decision the Commissioners decided that new instances could not be added by way of amendment. In the Dacca City case (2 Hammond's Indian Election petition No. 105), on the day that the Commissioners began their sitting, the petitioner presented a supplementary petition alleging three more instances of corrupt practice on behalf of the respondent, the court declined to entertain such a petition having regard to the period of limitation prescribed under the law and held it to be time-barred. In the Rangpur (East) case—Panchanan *vs.* Jatindra Nath (Jagat Narain's Indian Election petition Vol. III page 235), the Commissioners held that fresh instances of corrupt practice cannot be admitted by way of amendment of particular given in the petition. In Rohtak North-West case—Matu Ram *vs.* Lal Chand (Jagat Narain, Vol. II, page 159) the Commissioner held that amendment of the petition so as to introduce fresh charges of the particular corrupt practice alleged is not permissible. In Hissar North case—Sheokaran Singh *vs.* Sohab Rama (Jagat Narain, Vol. I, page 297 at 307) the Commissioners cited the following from the judgment of Hissar case (Nasir Ali Khan *vs.* Fyaz Ali Khan) which is probably an unreported case:—

> 'There is abundant authority for the view that a fresh instance of a corrupt practice cannot be regarded merely as an amendment of the particulars of such corrupt practice. Each single instance of the corrupt practice alleged is a substantive charge and there can be no doubt that the corrupt practice stated to have been committed at the villages mentioned above which were not mentioned in the petition, constitutes fresh instance of the same corrupt practice, *viz.*, undue influence by means of the posters, it would thus appear that if at any time during the hearing of this petition an application had been made by the petitioners for addition of the names of these villages to his petition, that application would have been liable to rejection for the simple reason that it did not furnish further particulars of a corrupt practice already alleged in the petition but added to the substantive charges of corrupt practice already mentioned in the petition.'

Even more recently there are numerous decisions of the Tribunals throughout the country in which the same view has been taken. Four or five Tribunals were working in this State. All held the same view. Even the Faizabad Tribunal of which two of us were members unanimously held in more than one case that new instances amounted to fresh charge and could not be entertained after expiry of the period of limitation.

Those cases can be cited as:—

(1) Election Petition No. 272 of 1952, Hanuman Parshad *Vs.* Tara Chand published in the U.P. Gazette Extraordinary dated April 21, 1953 page 24.

(2) Election Petition No. 267, Bhola Nath *Vs.* Krishna Chand Gupta, published in the U.P. Gazette Extraordinary, dated May 1, 1953, pages 15 and 16.

(3) Election Petition No. 321 of 1952, Shanta Devi Vaidya *Vs.* Bashir Husain Zaidi—order dated January 17, 1953, made on preliminary issues.

It is, thus, abundantly clear that each new instance is a fresh charge and cannot be added in the list of particulars in the garb of 'further and better particulars'. This being so, even if it be assumed that the provision of sub-section (3) of section 83 extend to the amendment of petitions proper, the new instances sought to be added in the petition by application dated February 27, 1953, cannot be added.

Amendment of the Petition.—The application of amendment is in fact a misconceived one. The applicant prays for addition of a new instance in the petition under sub-section (3) of section 83 of the Act although this provision does not lay down anything about the amendment of the petition proper. The arguments were heard on different dates. The learned counsel for the petitioner, in the early stage of arguments, confined himself to an attempt to show that his case came under 'further particulars.' However, at a subsequent stage, after hearing arguments of the other side, the petitioner's learned counsel began to press that his case was governed by rule 17 of Or. VI of the C.P.C. It was conceded that so far as the election courts constituted under the old law and under the Act were concerned preponderance of opinion was in favour of the view that Or. VI r 17 of the C.P.C. was not applicable in the election cases. It was, however, argued that recently different High Courts had held that the aforesaid provisions of the C.P.C. were applicable to election cases as well. Those decisions are:—

(1) Sitaram Hirachand Birla *Vs.* Yograj Singh, Shankar Singh (A.I.R. 1953 Bombay 293).

(2) Sri Shco Kumar Pandey *Vs.* V. G. Ook (1953 A.L.J. 323).

(3) K. T. Kosalaram *Vs.* M. R. Maganathan, Notes of this case were published as 1953 (2) Madras Law Journal 30 (Notes). A copy of the judgment has also been filed.

(4) A case of the Patna High Court short report of which appeared in some newspaper.

Before noticing these rulings I may point out that the formal defects, accidental slips and clerical or typing mistakes even in an election petition can be amended under the inherent powers possessed by every court of law. But the main and the only question for consideration in the present case is as to whether additions of substantial nature affecting the rights of the respondent's which accrued to them by operation of law can be made with the aid of Or. VI r 17 of the C.P.C.

I, now, proceed to notice the afore-cited cases.

The case of the Bombay High Court arose from the decision of a Tribunal. That decision is published in the Gazette of India Extraordinary, Part II, Section 3, dated February 5, 1953, page 236. In that case (1) a withdrawn candidate was not impleaded as respondent (2) the verification of the petition and list was defective, and (3) the particulars given in the list accompanying the petition proper were wanting in details.

Regarding the second and third points the Tribunal observed that

'the amendment sought *is not of a substantial nature but only of a formal character*, more or less in the nature of amplification of the original verification and the list' (paragraph 13)

and, therefore, it allowed amendment. Regarding the first point it remarked that

'the powers which the Tribunal can exercise under the C.P.C. are not at all restricted in scope *except where there are specific* provisions to the contrary in the Representation of the People Act.' (paragraph 12)

and therefore, it allowed addition of the names of the withdrawn candidate among the respondents.

The respondent of that case was dissatisfied with the decision of the Tribunal and he moved the writ petition before the Bombay High Court. The judgment of the High Court is reported as given above. The High Court held, while dealing with the question of amendment, that 'the Legislature conferred the power upon the Tribunal, *in proper cases, to amend* the petition and *to bring it in conformity with section* 83 so that it need not be dismissed. Regarding the impleading of the withdrawn candidate the High Court held that he was not a necessary party and that it was not obligatory to implead him as respondent. It may be noted that the High Court held that the petition can be amended in *proper cases* so as to bring it in conformity with the provisions of section 83 meaning thereby that discretion is left to the Tribunal and the question of discretion has been dealt with by me earlier. I have purposely underlined certain passages of the above-cited judgments as the same support the view that I am going to develop.

The former Lucknow Tribunal presided over by Shri Lokur, a former High Court Judge, following the view of the election courts old and new, had held, previous to the aforesaid Bombay decision, that the provisions of Or. VI r 17 C.P.C. did not apply in election cases. This point again came up before that Tribunal after the Bombay decision. In spite of that ruling that Tribunal adhered to its old view and, in a well-considered judgment, did not agree with the reasoning and conclusions of the Bombay case(*vide* Radhay Shyam's case cited above).

The other case is of the Allahabad High Court. In an election petition which was transferred by the Election Commission to the Allahabad Tribunal the petitioner did not implead the withdrawn candidate. The respondent of that case raised the plea that a withdrawn candidate was also a necessary party under section 82 of the Act and that, therefore, the petition was liable to be dismissed because the same was no petition at all within the meaning of section 80 of the Act. The Tribunal held that a withdrawn candidate was not a necessary party. Being of this view the Tribunal rejected the aforesaid plea of the respondent and proceeded with the hearing of the petition. The respondent of that case was dissatisfied with the order of the Tribunal and he moved the writ petition before the High Court. The court, following the aforesaid Bombay case, held that the withdrawn candidate was not a necessary party and it dismissed the writ petition. In that case it was observed that the provisions of Or. VI r 17 C.P.C. were applicable in election case.

The third case is of the Madras High Court. There were two writ petitions of the similar nature. Both were the cases of defective verification of the petition The first case went upto the appellate bench and throughout it was held that defects of formal nature could be rectified under the inherent powers of the Court. The applicability of Or. VI r 17 C.P.C. was, however, doubted The single Judge who decided the second writ petition also held the same view. In the mean time the aforesaid Bombay case was decided and was cited before the appeliate bench of the second case which held that the provisions of Or. VI r 17 C.P.C. applied to election cases as well.

The fourth case is of the Patna High Court. The copy of judgment of that case is not on the record nor has the case been reported yet. Brief report of this case appearing in some newspaper was referred to. It was, however, conceded that it was a case of the non-impleading of the withdrawn candidate.

Now, what these cases lay down is that formal defects, clerical mistakes and accidental slips in an election petition can be amended either under the inherent powers possessed by the court or under the provisions of r 17 of Or VI of the C.P.C. All these High Courts, it may be noted, are unanimous on the point that power to apply provisions of the C.P.C. to the election cases emanates from sub-section (2) of section 90 of the Act. And that section makes the provisions of the C.P.C. applicable but with a rider: 'subject to the provisions of this Act and of any rules made thereunder'. Therefore, it is always to be seen, before applying the provision of the C.P.C. that there is no prohibition contained in the Act or the Rules. If there is any prohibition contained in the Act or the Rules, the provisions of the C.P.C shall not apply.

A new instance of a corrupt practice is a fresh charge challenging the election. Such a charge can be made in the petition along with other charges. If it is not made in the petition it may be added therein within the time prescribed in Rule 119. If the time has expired, the clear provisions of section 80 read with sections 81

and 83 of the Act shall come into play and the addition of new instance would be refused. The provisions of r 17 Or. VI of the C.P.C. cannot be invoked because the matter comes within the four corners of the rider mentioned above. I have no doubt in my mind that the addition of a new instance cannot be added in a petition with the help of the aforesaid provisions of the C.P.C.

I may refer to a very important recent decision of the Punjab High Court a certified copy of which has been filed by the respondents. The case has not yet, perhaps, been reported in any law journal. The judgment of that case was delivered by Weston C. J. and Harnam Singh J. The case related to the election of the Delhi Municipality. The rules that govern elections of that Municipality are the same as the provisions of the Act. New instances of corrupt practice were sought to be added by an amendment application made before the Commission. That application was rejected. The petitioner moved writ petition before the High Court which in an instructive judgment held that that new instances if a corrupt practice cannot be added subsequently to the filing of the petition, I find full support from that judgment which is on all fours with the present case with this difference that in that case amendment of the list was sought whereas in the case before us it is the petition proper which is sought to be amended. It is however obvious that if a list cannot be amended, the petition proper, too cannot be amended else such anomalous and sometimes conflicting situations would arise which it would be impossible to exconcile. (Reference of the aforesaid case of the Punjab High Court is Civil writ application No. 196 of 1952—Hari Chand *Vs.* Sri Rameshwer Dayal and other—decided by the Circuit Bench.) Reverting again to the question of discretion even under Or. VI r 17 C.P.C., the discretion is to be exercised judicially and arbitrarily. It is to be exercised with a view to do justice *between the parties.* Even in cases directly governed by the C.P.C. it was held in more than one case that an allegation of fraud of one kind cannot be substituted for fraud of another kind. Similarly a new instance of seeking help *from the Government servants cannot* be added to the instances already given. Two such cases are reported as follows:—

(1) Abdul Husain *Vs.* Charles Agnew (I.L.R. 11 Bombay 620—a Privy Council case) and

(2) Bansiram *Vs.* Secretary of State (A.I.R. 1916 Calcutta—120).

Before I close I may point out that it would not be fair at this stage to look into merits of the allegation that is sought to be added. We have not heard the parties on this point. Hence it would be premature to surmise as to what kind of evidence would be required for proving the new allegation.

To sum up, I find that

(1) The application of February 27, 1953, is not verified at all. Therefore, it should be thrown out on this preliminary point.

(2) The application of September 16, 1953, does not help the petitioner because the amendment application is in the nature of an election petition. It is unverified. Case not being one of defective verification, the gap cannot be filled in by an amendment application of the amendment application.

(3) The affidavit filed at a late stage does not explain the delay.

(4) As the petitioner did not properly explain the delay the respondents should not be deprived of the valuable rights that have accrued to them. On this ground also the application deserves dismissed.

(5) Provisions of sub-section (3) of section 83 do not apply to the facts of this case.

(6) Amendment of an election petition so as to add substantial charge by introducing new instances of corrupt or illegal practice cannot be made even by taking the help of Or VI r 17 of the C.P.C.

Therefore, in view of the findings recorded above I would dismiss the application dated February 27, 1953, and also the application of September 16, 1953.

(Sd.) M. U. FARUQI, *Judicial Member.*

The 28th November, 1953.

ORDER BY THE TRIBUNAL

There is a difference of opinion among the members of the Tribunal on the subject as to whether the Petition's application dated 27th February, 1953, for amendment of para 7(c) of the petition should be allowed or not. Sri A. Sanyal, Advocate Member and Sri Raghunandan Saran, Chairman are for allowing the amendment whereas Sri M. U. Faruqi, Judicial Member is against it. In these circumstances the opinion of the majority is to prevail under the provisions of section 104 of the Representation of the People Act, 1951.

It is, therefore, ordered that para 7(c) of the petition shall be amended as prayed for. The contesting Respondents may file any additional written statements they like by **5th December, 1953** by way of reply to the amendment made in the petition.

(Sd.) R. SARAN, *Chairman.*

(Sd.) M. U. FARUQI, *Judicial Member.*

(Sd.) A. SANYAL, *Advocate Member.*

ANNEXURE B

ELECTION PETITION NO. 320 OF 1952.

Sri Tirloki Singh—*Petitioner.*

Versus.

Sri Harish Chandra Bajpai and others.—*Respondents.*

ORDER

This election petition was filed before the Election Commission, India on June 9, 1952 by Sri Tirloki Singh in respect of the election to the U.P. Legislative Assembly from the Lucknow Central Constituency of the District of Lucknow which was double member constituency. As a result of scrutiny held after polling the Returning Officer declared Sri Harish Chandar Bajpai (Respondent 1) and Sri Rama Shankar Ravivasi (Respondent 2) as duly elected. The Petitioner who was one of the contestants was, thus, defeated. He presented the petition challenging the election on several grounds. The Respondents 1 and 2 challenged the petition on various grounds, some of which related to certain preliminary points. Issues were struck and the parties agreed that findings on issues 1 to 4 and 13 be given by the Tribunal and if necessary after the findings the case should be proceeded with. The issues referred to above are as follows:—

1. Are the petition and the schedules attached to the petition liable to be rejected for want of proper verification?
2. Is the petition liable to be rejected for non-compliance with the provisions of section 83(2) of the Representation of the People Act 1951?
3. Are the allegations of corrupt and illegal practices made in the petition and the schedules attached to the petition vague and indefinite and should not be entertained for that reason?
4. Should the allegations of corrupt and illegal practices made in the petition and in the schedules be entertained in the absence of a list of such practices and in the absence of a proper verification of such list, as required by section 83(2) of the Act?

13. Whether the lists accompanying the petition are only verified and not signed by the Petitioner?

If so, what is its effect?

Findings

Issue 1.—Contention of the Respondent is that the petition and the lists accompanying it not having been duly verified according to law were liable to be rejected. The verification at the end of the petition is as follows:—

'I, Tirlok Singh, petitioner, verify that the contents of paras 1, 2, 3, 4, 6 and 17 are true on knowledge and those of paras 7A(i) and B are

verified to be true partly on belief and partly on knowledge and those of paras 5, 7A(ii), (iii) and (iv), C, D, E, F, G, H, I, J, K, the whole of L, M, 8, 9, 10, 11, 12, 13, 14, 15, 16 are believed to be true.'

and that at the end of each of schedules accompanying the petition is verified to be true on belief

The above cited verification can be divided in three parts. Some of the paragraphs are verified to be true on knowledge and about these the Respondent's learned counsel conceded at the time of arguments that he had no grievance. The second part consists of those paragraphs which are verified to be true partly on knowledge and partly on belief. About this part of the verification it was contended that as portions verified on knowledge could not be separated from those verified on belief whole of this part should be held as not properly verified. About the third part of the verification of the petition as also the verification of the schedules it was contended that it was no verification at all within the meaning of Or. VI r 15 of the C.P.C. which has been made applicable to the election petitions under sub-section (2) of Section 83 of the Representation of the People Act 1951 (hereinafter to be called the Act).

Before commenting on the above verification in the light of the contentions of the Respondent's side, it is proper that the provisions of law relating to the verification of an election petition may be noticed. These provisions are contained in Chapter II of part VI of the Act. Section 80 thereof lays down that 'no election shall be called in question except by an election petition presented in accordance with the provisions of this part i.e. the part in which the section referred to above occurs. Relevant portion of section 81 is that 'an election petition calling in question any election may be presented..... in such form and within such time.....as may be prescribed.' Section 83 enjoins that the petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for verification of pleadings and that the list of particulars accompanying the petition shall also be similarly signed and verified. It is argued that if a petition or list of particulars is not properly verified according to law it is not a petition within the meaning of sections 81 and 83 and the election cannot be questioned on the basis thereof as laid down in section 80 of the Act. It is further contended that if a petition suffers from the defect of verification it is liable to be dismissed by the Election Commission under section 85 of the Act and if it passes that stage the Tribunal is to reject it under sub-section (4) of section 90 of the Act.

Generally speaking this argument so far as it goes may be correct in cases wnere there is complete absence of verification but in this particular case we are not concerned with that phase of the question and so we do not desire to express any opinion thereon.

The present case is one of defective verification. Verification is there but it is contended that it is not in accordance with the provisions of Or. VI r. 15 of the C.P.C. which is as follows:—

Rule 15(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

In civil cases this rule has been liberally interpreted and help is always taken of the provisions of r 17 which follows r 15. That rule relates to amendment of pleadings and is as follows:—

'The Court may at any stage of the proceedings allow wiether party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.'

We have pointed out above that the above provisions give wide powers to courts of law and the same have been liberally interpreted so much so that it was held that even want of verification does not have the effect of making the plaint void, that it merely amounts to an irregularity, that it does not affect merits of the case and that it can be rectified by permitting the party concerned to make good the deficiency by amending the pleadings under Or. 6 r 17 C.P.C. (Ram Labhaya Mal *Vs.* Kirm Chanchal Singh A.I.R. 1932 Lohore 28). A defective verification is said to be only an irregularity in procedure and will not be a ground for rejecting the plaint (I.L.R. 25 All. 635—Maharaja of Rewa Vs. Swami Saran) and the defect can be cured by amendment at any state of the suit (A.I.R. 1949 All. 499—Qanayat Husain *Vs.* Must. Sajidunnissa Bibi). Amednment of verification can be made even after the expiry of limitation (A.I.R. 1926 Lahore 82—Amritsaria *Vs.* Guman). Objection to verification should be taken at the earliest opportunity and if not so taken will be deemed to have been waived (1875-24 Suth W.R. 71-D.B. Sharma Soonduri Dibia *Vs.* Rohimooddeen Sirdar). It is further held in the last-mentioned case that a false verification will not entail dismissal of a suit Law on the point is discussed, considered and summarised by Bhagwati J in Prince Line *Vs.* Trustees of Port Bombay reported as A.I.R. 1950 Bom. 130. It is held in that case that the court has always got the discretion, if a plaint is not verified in accordance with Or. VI r 15 C.P.C. to allow the plaintiff to remedy the defect at the later stage even though the period of limitation may already have expired. But, it is further held, that is a matter of discretion of the court which the court exercises after due consideration of all the facts and circumstances of the case before it. Regarding the removal of defect after expiry of period of limitation it is held that

> 'If after a due deliberation of all the facts, the Court comes to the conclusion that it is just that, in the exercise of its discretion, it should allow the defect to be cured, it can do so irrespective of the fact that the defendant has vested in him by that time a right to plead the bar of limitation."

It is thus, clear that the civil courts have very wide powers in respect of the amendment of verifications. It was, however, contended that though the tribunals are to try an election petition as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, the applicability of those provisions is made subject to the Act and to the rules made thereunder (Section 90 sub-section 2) and that therefore the provisions of sections 80, 81 and 83 of the Act cannot be lost sight of and shall necessarily come into play. Consideration of these provisions and a comparison thereof with r 15 and 17 of Order VI of the C.P.C. as interpreted and applied by Courts will show that the wide powers of the civil courts are narrowed down by the provisions of the Act in two respects—absence of verification [section 83(2) and bar of limitation section 81(1)]. So far as the first point is concerned we are not called upon to consider it in this case. The question of limitation, however, needs consideration. The case before us is of defective verification.

Dismissal of an election petition in limini is provided in section 85 and sub-section (4) of section 90 of the Act. Under section 85 of the Act, 'if the provisions of section 81, section 83 of section 117 are not complied with, the Election Commission shall dismiss the petition' but the commission is empowered to condone the delay in the presentation of the election petition. In the case before us the Election Commission did not dismiss the petition. On the other hand it proceeded under section 86 of the Act, sub-section (1) of which runs as follows:—

> 'If the petition is not dismissed under section 85, the Election Commission shall appoint an Election Tribunal for trial of the petition.'

A perusal of the above provision will show that the Election Commission will constitute a Tribunal for trial of the petition only when the powers conferred on the Commission about dismissal of the petition have not been exercised. The Commission is bound under section 85 to examine the petition in order to find out if the provisions of sections 81, 83 and 117 have been complied with. It naturally follows that, if a petition is sent for trial to a Tribunal it is to be presumed that the Commission after examination of the petition came to the conclusion that the same was not hit by the aforesaid sections of the Act. In one of the decisions of a Tribunal of Luknow (vide order dated March 21, 1953 in Election Petition no 256 of 1952-Radhay Shyam *Vs.* Chandra Bhan Gupta) while while dealing with defects in the particulars it was remarked;

'If the defect of want of full particulars in the list *escapes the notice* of the Election Commission and the petition is sent to Election Tribunal then sub-section (3) of section 83 empowers the Tribunal to allow the particular in the list to be amended.....'

We find ourselves unable to agree to the view that any defect can escape notice of the Commission. Every official act must be presumed to have been performed according to law unless the contrary is proved. Therefore, there is no question of presuming that the Commission without scrutinising the petition sent it on far trial before a Tribunal and that any defect escaped its notice. The view that we have taken in this case was also taken by two of us in the order dated March 17, 1953 made by majority in the Election Petition no. 282 of 1952—Sheo Dutt *Vs.* Bansi Das Dhangar.

Thus the petition in the case before us was not dismissed by the Election Commission under Section 85 of the Act for want of proper verification. It will not be out of place to conclude that the Commission found the defect in verification too trivial to be taken any notice of.

Crossing of this hurdle, however, does not end matters. The petition in an election case has to face another scrutiny at the hands of the Tribunal under sub-section (4) of section 90 of the Act. Unlike section 85 which is mandatory, this provision confers a discretion on the Tribunal either to dismiss or not to dismiss a petition which does not comply with the provisions of section 81, section 83 or section 117. Use of word 'may' in the aforesaid sub-section confers the said discretion. (*Vide* A.I.R. 1953 Bom. 293—Sita Ram Hari Chand Birla *Vs.* Yograj Shankar singh Parihar). It may be noted that words 'within such time' occur in sub-section (1) of section 81. It is, therefore, clear that the discretion given in sub-section (4) of section 90 also covers the question of limitation. Thus the provisions of the Act are manifestly in a line with the general law as summarised by Bhagwari J in the aforecited Bombay case.

The practice of striking out or disregarding some of the allegations of the petition in an election case emanates from sub-section (4) of section 90. Instead of dismissing a petition for non-compliance of the provisions of section 81, section 83 or section 117 of the Act, the Tribunals take a liberal view and strike out or disregard only such of the contents of a petition as are hit by the aforesaid provisions.

Having come to the conclusion that the Tribunal has discretion to disregard non-compliance of the provisions of sections 81, 83 or section 117 we proceed to notice the verification of the petition before us. We have shown that the verification can be divided into three parts. The Respondent has no objection about the first part. The third part, according to him, is not in conformity with the provisions of r 15 of Or. VI of the C.P.C. and therefore the paragraphs concerned should be disregarded. Though the second part is verified partly on knowledge and partly on belief, without specifying which part is verified on knowledge and which on belief, the whole, according to the Respondent, should be disregarded. Same was the contention in respect of the schedules all of which are verified on belief.

There is no doubt about the fact that the verification of the second and third part of the petition and of the schedules is not in strict compliance of the provisions of r 15 of Or. VI of the C.P.C. The question, however, is whether the defect should be treated as mere irregularity and should be disregarded or it is such as calls for the exercise of the discretion of the Tribunal against the Petitioner.

It was contended from the side of the Respondent that the provisions of the Act should be strictly followed. We have nothing to say against this contention. But we must guard against making the law too technical laying greater emphasis on form than on substance. So far as the application of sub-section (4) of Section 90 is concerned, a discretion is given to the Tribunal which is to be exercised judicially having regard to facts and circumstances of a particular case. In the case before us it cannot to said that the petitioner had any motive in giving defective verification. Allegations are made in the petition and the same are verified at the end. The defect in the verification cannot be attributed to the Petitioner himself. The same crept in most probably owing to the carelessness of the lawyer who drafted the petition and the schedules. The defect is trivial and wholly unimportant. In civil cases very liberal view is always taken in respect of defective verifications. Sometimes, if objection is not taken at the earliest opportunity, belated objection is disregarded and the case is

proceeded with in spite of the defect in verification. While considering the scope and extent of the discretion vested in the Tribunal, it is impossible to disregard the views that have been taken from time to time by the different High Courts. To disregard the defectively verified paragraphs of the petition in spite of the fact that the defects are of trivial and flimsy nature would be closing the door of fair and effectual trial of the case on the Petitioner. Therefore, for the reasons given above, we disregard the defects that have crept in the petition owing to negligent and careless drafting by the lawyer and not because of any bad motive or even negligence of the Petitioner.

Though we are of opinion that in this particular case we can proceed with the trial disregarding the defect, we think it proper to call upon the Petitioner to clarify as to whether his 'belief' as given in the verification of the petition and of the schedules is based on the information received.

This brings us to the question whether a petition in an election case can be amended. We are definitely of opinion that in proper cases petition can be amended. The Faizabad Tribunal of which two of us were members decided unanimously, on March 20, 1953, while dealing with preliminary issues, in Election Petition no. 330 of 1952—Sri Ratan Sukla *Vs.* Dr. Brijendra Swaroop—that the Tribunal was possessed of inherent powers being a court of law to order amendment of the petition in proper cases. That was a case of mistyping the name of one of the respondents. 'Sarswati' was typed in place of 'Sheo'. The Tribunal ordered correction. But the 1953 case of Bombay High Court referred to above was in respect of defective verification. The Tribunal which decided that case observed:

> 'So far as the verification and the particulars of the list are concerned, the amendment sought is not of a substantial nature but only of a formal character more or less in the nature of amplification of the original verification and the list.' (*Vide* Gazette of India Extraordinary dated February 5, 1953, Part II section 3 page 286 giving the decision in Election Petition No. 72 of 1952—Yograj Singh *Vs.* Sita Ram).

The Respondent of that case was dissatisfied with the order and moved a writ petition. While deciding that petition the Bombay High Court held that verification was rightly ordered to be amended.

From the side of the Respondent we were referred particularly to two orders—one made on March 21, 1953 in Election Petition No. 256 of 1952, Radhay Shyam *Vs.* Chandra Bhan Gupta and the other made on March 24, 1953 in Election Petition no. 209 of 1952, Abdul Rauf *Vs.* Govind Ballab Pant both decided by the same Tribunal of Lucknow. The former case was of absence of verification. As pointed out above, we are not dealing in the case before us with absence of verification, but only with defective verification. Though that Tribunal held that it was not empowered to allow the defect of absence of verification to be removed, it pointed out that even if it had been invested with any discretion it would not have exercised it in favour of the petitioner of that case because.

> 'he who seeks equity must come with clean hands, but the petitioner has all along been trying to bluff and deceive us into the belief that he made his signatures after the schedules were typed and the verification was written out.'

Further on that Tribunal made the following significant remark—

> 'Had he told the truth and frankly discussed the circumstances under which he made his signatures on blank sheet of paper, we might perhaps have been induced to consider his application for amendment sympathetically.'

The other case which was decided almost simultaneously with the first also dealt with the question of verification. Annexure C of that petition was verified on belief. The same was held to be not duly verified. The order does not proceed further. It does not consider as to what would be the effect of defective verification because that annexure was struck off being indefinite and vague. It is, therefore, clear that none of the two decisions dealt with the particular question that is before us in this case. The above-cited observation made in Radhay Shyam's case, though couched in guarded language, speaks for itself.

Therefore, in view of what is said above we hold that the petition and the schedules attached to the petition are not liable to be rejected for want of proper verification. The Petitioner shall, however, be called upon to clarify the ambiguity that has crept in the verifications.

Issue No. 2.—This issue was struck on the plea of Respondents 1 and 2 to the effect that no separate list of corrupt and illegal practices alleged in the petition having been filed as provided in sub-section (2) of section 83, the petition was liable to be dismissed as it was no petition at all within the meaning of section 80 of the Act. As pointed out in the course of our finding on issue 1 a petition is to be dismissed *in limini* by the Tribunal under the discretionary powers contained in sub-section (4) of section 90 of the Act. As pointed out therein, these powers are discretionary and are to be exercised judicially having regard to the facts and circumstances of each particular case. If the allegations of corrupt and illegal practices are given in detail in the petition itself, it is immaterial that a separate list thereof has not been filed. Though, in such a case, letter of the law has not been followed, the petition is not liable to be dismissed on that score because the necessary information is contained in the petition itself. Thus, apart from the question of vagueness and indefiniteness, mere absence of list of corrupt and illegal practices cannot make a petition liable to dismissal under sub-section (4) of section 90 of the Act. Two of us took this view in the order made by the majority of the members in Sheo Dutt's case referred to above. We adhere to and accept that view. In this connection reference may also be made to the decision in the case Khan Bahadur Shah Mohammad Yahya *Vs.* Chaudhari Nazirul Hasan reported at page 549 of Sen and Poddar's Indian Election cases. A recently decided case, Sri T. T. Prakasam *Vs.* Dr. U. Krishna Rao, published in the Gazette of India Extraordinary Part II section 3, dated January 5, 1953 is also to the point. Still more recently, in the case of Election Petition No. 319 of 1952—Khushwaqt Rai *Vs.* Sri Karan Singh and others—pending before this very Tribunal same view was taken in the order dated March 21, 1953 by two of us and by the Chairman who had differed from the majority view in Sheo Dutt's case. Therefore, for the above reasons, we hold that the petition in this case is not liable to be dismissed for non-compliance with the provisions of section 83 (2) of the Act. The issue is decided accordingly.

Issue No. 3.—Points raised in this issue need detailed consideration. Before entering into the discussion in detail the question of filing of replication by the Petitioner may be disposed of. The Respondents, in their written statements, pointed out that the paragraphs of the petition relating to corrupt and illegal practices were fague and indefinite and that, therefore, the same should be disregarded. After the filing of the said written statements, without any order of the Tribunal, the Petitioner filed a replication in which such of the details as were not given in the petition and in the schedules were supplied. The Respondents too.....great exception to the filing of the replication chiefly because the same was filed without order of the Tribunal. In our view the matter is not so serious as the Respondents have depicted it to be. The filing of the replication by itself is not at all a breach of law. Rule 2 of Or. X of the C.P.C. empowers a court of law to examine the parties or either of them for elucidation of the matters in issue and for pinning them down to a definite case. If a plaintiff without being examined by the Court under Or. X or 2 C.P.C. files a replication in reply to the new points raised in the written statement of a defendant such a plaintiff instead of breaking any provisions of law helps the court in the elucidation of the matters in issue. Similarly if a respondent in an election case raises some new points in the written statement and the Petitioner, without an order by the Tribunal, files a replication replying to the new points raised in the written statement the latter does not contravene any provisions of law. To proceed a step further, if a petitioner, realising that certain details of corrupt and illegal practices were wanting in the petition or the schedule and thinking that he was entitled to furnish those details under sub-section (3) of section 83, files a replication giving those details, he does not in our view contravene the provisions of law. This is another matter that on an examination of the details given in the replication the Tribunal comes to the conclusion that certain new allegations were contained in the replication. If this is so, the new details would be rejected. But mere filing of the replication as such cannot be tabooed. Therefore we accept the replication but only for the purpose of such details as can be furnished by a petitioner under sub-section (3) of section 83.

Having disposed of the question of replication we proceed with the consideration of the allegations contained in the petition as elucidated in the schedules and the replication. The question of interpretation of the provisions of the three sub-sections of section 83 has been subject of consideration by the Election

Courts. Some took a narrow and restricted view and some looked at the question from a rather broad point of view. We have considered the question in detail in our order dated September 30, 1952 made on preliminary issues in Election Petition No. 330 of 1952—Sri Shri Ratan Shukla *Vs.* Dr. Brijendra, Swaroop. It would be making this order too long if we repeat our reasoning ambodied therein. We adhere to that view inspite of the learned and helpful arguments of the side of the Respondents.

Paragraphs 1 to 6 of the petition need no comment nor was anything said in respect thereof from the side of the respondents.

In the preamble of paragraph 7 of the petition words *inter alia* shall be disregarded because of being vague.

In the preamble of paragraph 7A words 'and through their agents and workers' shall be disregarded for the same reason.

In paragraph 7A(i) all the necessary details are there except that the electors who were entertained have not been named. This omission, however, is not such as may entail rejection of this allegations. The Petitioner shall furnish names of the electors or at least some of them who were so entertained.

In paragraph 7(A)(ii) place and time are not given but this omission was not such as would render the allegation vague. Replication removed this defect so far as place is concerned but the time given in the replication prior to the date of election' is vague. The petitioner shall specify the time of promise made to each of the persons named in the petition.

Paragraph 7A(iii) cannot be considered and must be disregarded. It appears from the replication that certain agents of the Respondents named therein were responsible for this corrupt practice but, as these names of the agents were not given in the petition, this allegation cannot be investigated.

Paragraph 7(A)(iv) is not vague but for the omission for the names of the place where payment and promise were made. This defect can, however, be remedied by calling for this particular from the Petitioner.

In paragraph 7(B) allegation is about the procuring of vehicles for carrying voters to the polling stations on the polling day. Words 'or by their agents and workers' are too vague to be taken into consideration. Moreover, no description of the vehicles used in given. If the allegation is true names of owners or drivers of the vehicles or their registration numbers should have been given. These defects have not been remedied in the reflcation. We do not think it proper now to ask the petitioner to remove these defects because there are fair chances of the manufacturing of evidence on this point. This paragraph, therefore, shall be deemed to have been deleted.

Paragraph 7(c) is not vague. It shall remain as it is. Corresponding paragraph of the replication introduces some new matters. Therefore the same shall be disregarded. The Petitioner has not named to Government servants. He shall supply the names of the officials including those of the Patwaris and Qanoongos.

Paragraph 7(d) cannot be considered for the simple reason that the words 'a large number of congress workers' is very vague and indefinite. Further names of the 'electors' on whom undue influence is alleged to have been exercised have not been mentioned and the words 'a large number of petitioner's voters who ran away without exercising their franchise' are again very vague and wholly indefinite. Even the replication does not throw any light on these omissions of details. So this paragraph shall be deemed to have been scored out.

Paragraph 7(E) and 7(F) are not vague and are to be retained.

Paragraph 7(G): In this paragraph following passages are vague and indefinite and shall be deemed to have been scored out:—

(1) 'The agents and workers of the respondents Nos. 1 and 2 secured her assistance in the casting of voters.'

(2) 'The officials of this polling station further assisted respondents Nos. 1 and 2 by allowing their workers to go in and out of the polling booths any number of times they wanted' and

(3) 'The election propaganda by the workers and agents of respondents 1 and 2 within 100 yards of the polling station was not stopped.'

The polling officers and polling clerks who are alleged to have 'frequently entered the polling compartments when certain voters were led by the agents of respondents Nos. 1 and 2' shall be named by the petitioner.

Paragraph 7(H) shall remain except the words 'and also several other workers' which are vague and which shall be deemed to have been scored out.

Paragraph 7(I) has schedule I attached with it. This paragraph and its schedule shall be retained except that the following from this paragraph shall be deemed to have been scored out on the ground of vagueness:—

'by the workers of the respondents Nos. 1 and 2 and they manipulated to get the decision that any one who did not vote for respondents Nos. 1 and 2 would be ex-communicated from the community panchayats and socially ostracised'

and following from the schedule for the same reason:—

'The details and other names of the places where such meetings were held will be submitted later on.'

Paragraph 7(J) and 7(K) are too vague and indefinite to be made subject matter of issues. Names of places and dates when appeal was made by respondent 1 and national symbol was used by respondents 1 and 2 have not been given. These paragraphs shall be deemed to have been scored out. Omissions of necessary details in these paragraphs cannot be permitted to be clarified by the replication.

Paragraphs 7(L) (i) to (iv) are too vague and indefinite to be made subject matter of investigation.

The paragraph 7(L)(V) can be divided in two parts. In the first part it is alleged that the respondents have not shown in full the expenses incurred at four election offices. 'Not shown in full', in the absence of details, is vague and so this part cannot be considered. In the second part it is alleged that the respondents had their election offices at some places (names in the petition) and that the expenses incurred in the maintenance of those offices have not been shown in the return of election expenses. The respondents deny having opened election offices at those places. The result, therefore, is that if the petitioner proves the opening of election offices at the named places it would follow that some expenses must have been incurred there which have not be shown in the return of election expenses. The second part should therefore remain. The result is that the following shall be scored out from this paragraph:—

(1) 'in full the expenses incurred on the maintenance of 4 election offices at Kakori, Banthra, Chinhat and Chandganj and has further not shown'

(2) 'other' between 'incurred on' and 'election offices'.

Paragraph 7(L)(vi) shall remain because the respondents admit deposit of security which was returned to them. Thus in the light of admitted facts, if it is proved that the amount of security was returned, the only question that shall remain for consideration will be whether in law this item should have been shown in the return of election expenses.

Paragraphs 7(L)(vii) to (xi) are to remain for the same reasons as above. Schedule 2 is appended with (xi). It shall also remain but the petitioner shall give the dates of the meetings held in the villages named at page 2 of the Schedule.

Paragraph 7(L)(xii) shall be scored out on the ground of being vague.

Paragraph 7(L)(xiii) shall remain but the corresponding paragraph in the replication shall not be considered as it contains new material.

Paragraphs 7(L)(xiv) to (xvi) shall be scored out on the ground of being vague.

Paragraph 7(L)(xvii) shall remain along with schedule No. 3 appended to it.

The last passage at the end of 7(L) beginning with 'The petitioner further submits' and endign with 'declared vacant' shall remain.

Paragraph 7(M) is not vague. It shall remain.

Paragraph 8 is almost the same as paragraph 7(H). This paragraph shall remain.

Paragraph 9 along with schedule 4 shall remain except 'and their agents and workers' in the paragraph and the last sentence of the schedule both of which shall be considered as deleted as the same are vague.

Paragraph 10 can be divided into two parts. One part relates to an irregularity. In the other it is alleged that the ballot boxes were tampered with and the ballot papers of one box were transferred to another box. This allegation is a major corrupt practice and in effect is covered by clause (8) of section 123.

Therefore this allegation needed details as provided in section 83(2). The help of sub-section (3) cannot be taken because the allegation made is too vague to call for further and better particulars. The first part of this paragraph shall remain and the second part shall be scored out.

Paragraph 11 is as follows:—

'That the indelible ink as contemplated by the rule was not used and as a result of this contravention of this mandatory provision a large number of persons impersonated. A list of some such instances shall be submitted after the inspection of the relevant records.'

The first part of the first sentence presents no difficulty. It is to remain. The question, however, is whether the second part of the first sentence and the second sentence should be retained. Personation with the aid or connivance of a candidate or his agent is a major corrupt practice under sub-section (3) of section 123 and if personation is resorted to otherwise it becomes a minor corrupt practice under sub-section (1) or (2) of section 124. This being so, this allegation is clearly hit by the provisions of sub-section (2) of section 83 and no details whatsoever of personation having been furnished help of sub-section (3) cannot be taken Therefore the passage beginning with words 'and as a result of this contravention' upto the end and the second sentence shall be scored out.

Paragraph 12 relates to irregularities and shall remain. Paragraph 13 is general and does not introduce any new matter. Therefore it shall remain.

Paragraph 14 relates to the allegation that the Congress organisation spent money in furtherance of the election of the respondents 1 and 2 and that the said money was not shown in the return of election expenses of the said respondents. It is also alleged in the paragraph that if these expenses were included in the return the same would far exceed the maximum limit. The respondents objected to these allegations, *inter alia*, on the ground that the details were lacking. The details are no doubt, lacking. It was argued that it was not possible for the petitioner to give details of the expenditure incurred by the Congress for respondents 1 and 2. This is true but it was possible for the petitioner to give some details as for instance if any vehicle belonging to or hired by the Congress was used its registration number easily could be known and given in the petition. Similarly if any Congress workers canvassed for the respondents 1 and 2 their names etc. could have been given. This paragraph is too vague to admit of consideration. It shall be scored out.

Paragraph 15 is not vague and it shall remain.

Paragraph 16 is too vague to be taken into consideration.

Paragraph 17 is the last. It is about deposit of security. It shall remain

This finishes our findings on issue No. 3 which is decided accordingly.

Issue No. 4.—Points covered by this issue are covered in the findings of the first three issues. This issue, therefore, is decided accordingly.

Issue No. 13.—There are several lists accompanying the petition. At the foot of each list the clause of verification is appended below which appear signatures of the petitioner. In short each list is signed by the petitioner only at one place *i.e.*, below the verification. Contention of Sri Haider Husain appearing for the respondent was that each list should have been signed by the petitioner at the end and then there should have been the verification clause which again should have been signed by him. According to him, by not signing each list at the end, the petitioner contravened provisions of sub-section (2) of section 83 of the Act which entailed rejection of the petition or at least, rejection of the list concerned. Strictly speaking the first part of the argument is correct. Each list should have been signed at two places—one at the end of the list and again at the end of the verification. But we are not prepared to accept the second part of the argument. In our opinion this defect does not entail rejection of the lists or of the petition. The defect is only of formal nature and does not in our view, call for strict compliance nor should it be construed to result in rejection of the list or the petition. When the petitioner himself verified the list it is immaterial whether he makes his signature at one place or at two places. The purpose of signing a document is to show that the person signing endorsed the contents thereof. That object is served when the verification is duly signed. The signatures at two places become of some consequence only when the person signing the verification is different from the one who makes a certain document. This is, however, not the case before us. The same question arose in the case of Election Petition No. 209 of 1952 (Abdul Rauf *Vs.* Hon'ble Govind Ballabh Pant

and others). The Tribunal which decided that case in a preliminary order, dated March 24, 1953 observed, after describing the defect which was the same as in the present case.

> 'we do not think this is fatal defect. The list or annexure together with the verification bears the petitioner's signature. The expression used in section 83 "signed by the petitioner and verified" is intended to show that person verifying need not necessarily be the petitioner himself.....But if the petitioner himself verified it then his single signature below both of them would meet the requirement of Or. vi r 15 of the Code. At the most it is an irregularity which does not vitiate the validity of the annexure.'

With respect, we agree with this interpretation and held that the lists though signed only below the verification clause should be taken to have been duly signed and verified as required under sub-section (2) of section 83 of the Act. Issue is decided accordingly.

The result of the above finding is that the parties shall now be called upon to adduce evidence in respect of the allegations that remain after our scrutiny as detailed above.

But before proceeding with the hearing of evidence the petitioner shall

(1) remove the ambiguity in the verification of the petition and of the schedules. He shall indicate as to what he verifies from personal knowledge and what from the information received and believed to be true,

(2) under paragraph 7(A)(i), furnish names of the electors or at least some of them who were entertained,

(3) under paragraph 7(A)(ii), specify the time of promise made to each of the persons in the petition,

(4) under paragraph 7(A)(iv), give name of the place where payment or promise was made,

(5) under paragraph 7(C), name the Government servants including the Patwaris and the Qanoongos,

(6) under paragraph 7(G), name the polling officer and polling clerks who are alleged to have frequently entered the polling compartments when certain voters were led by the agents, of the respondents 1 and 2, and

(7) under paragraph 7(L)(xi) schedule 2, give dates of the meetings held in villages named at page 2 of the schedule.

The petitioner shall furnish the above details by 10th November, 1953 after which, a date for hearing evidence shall be fixed.

(Sd.) R. SARAN, *Chairman.*
(Sd.) A. SANYAL, *Advocate Member.*
(Sd.) M. U. FARUQI, *Judicial Member.*

The 31st *October*, 1953.

ANNEXURE 'C'

BEFORE THE COURT OF ELECTION TRIBUNAL, LUCKNOW

ELECTION PETITION NO. 320 OF 1952

Sri Tirloki Singh—*Petitioner.*

Versus

Sri Harish Chandra Bajpai and others—*Respondents.*

ORDER

By an order dated 28th November 1953 this Tribunal on the petitioner's application dated 27th February, 1953 allowed the amendment of the election petition by adding certain village headmen as persons serving under the Government whose assistance was taken by the respondents in their election; in the amendment application it was stated that these headmen issued appeal and worked and became the polling agents of the respondents No. 1 and 2 and the amendment was allowed in these terms. However, no particulars of any other work that

may have been done by any such headmen were given except that these headmen issued an appeal and became polling agents; it was not specified at all as to what was the nature of any other work that may have been done by any of them or the date or place of any such work; rather in the remarks column of the amendment application it was specifically mentioned against some of these persons that they worked as polling agents and against the others that they were signatories to the appeal. Now the petitioner wants to adduce oral evidence about the work said to have been done by these headmen in addition to issuing the appeal and acting as polling agents and the respondents object to such evidence being given.

We have heard the learned counsel of the parties in respect of the objection of the respondents to such evidence being admitted and we are of the opinion that such evidence should not be allowed to be adduced in view of the fact that no particulars of this other work as required under section 83(2) of the Representation of the People Act, 1951 were ever given and it was not specified at all as to what was the nature of this work and the date on which and the place at which such work was done. We think that allowing such evidence to be produced at this stage and in these circumstances is likely to open the door for concocted evidence and the respondents may be taken by surprise and it may not be possible for them to meet all this evidence. The result is that we allow the objection of the respondents and refuse the evidence in question to be adduced.

(Sd.) R. SARAN, *Chairman.*

(Sd.) M. U. FARUQI, *Judicial Member.*

The 11th September, 1954. (Sd.) A. SANYAL, *Advocate Member.*

ANNEXURE I

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDISTION.

CIVIL APPEAL No. 333 OF 1956

Sri Harish Chandra Bajpai and Sri Ram Shankar Ravibasi—*Appellants.*

Versus

Sri Triloki Singh—*Respondent.*

JUDGMENT

Venkatarama Aiyar, J:

This is an appeal by special leave against the order of the Election Tribunal, Faizabad, declaring the election of the appellants to the Legislative Assembly, Uttar Pradesh from the Lucknow Central Constituency, void under section 100(2)(b) of the Representation of the People Act No. XLIII of 1951, hereinafter referred to as the Act. The Constituency is a double-member Constituency, one of the seats being reserved for a member of the Scheduled Castes. The polling took place on 31st January 1952, and the two appellants were declared elected, they having secured the largest number of votes. On 10th June 1952 the respondent herein filed a petition under section 81 of the Act alleging that the appellants had committed a number of corrupt practices, and prayed that the election might be declared wholly void.

The appellants filed written statements denying these allegations, and on the pleadings, issues were framed on 17th January, 1953. Then followed quite a spate of proceedings, consisting of applications for framing of fresh issues, for better particulars and for amendment of the election petition, to which a more detailed reference will presently be made. As a result of these proceedings, it was not until September 1954 that the hearing of the petition began. On 23rd March 1955, the Tribunal delivered its judgement and by a majority, it set aside the election on two grounds, (1) that the appellants had obtained the assistance of four village officers, Mukhias, in furtherance of their election prospects and had thereby contravened section 123(8) of the Act; and (2) that the first appellant had employed for payment in connection with his election two persons in addition to the number permitted by Rule 118 read with Schedule VI, namely, Ganga Prasad and Viswanath Pande, and had thereby infringed section 123(7) of the Act. Before us, the appellants dispute the correctness of the conclusions on both these points.

As regards the first point, the main contention of the appellants is that the charge that they had employed four Mukhias in furtherance of their election prospects was not pleaded in the petition as originally presented, and that it

came in only by an amendment dated 28th November, 1953, that the tribunal had no power to order that amendment, and that accordingly the finding thereon should be disregarded. It is necessary for a correct appreciation of the contentions on either side to state the facts leading to this amendment.

The material allegations in the petition as it was presented on 10th June, 1952 are contained in paragraph 7(c), and are as follows:

> "That the respondent Nos. 1 and 2 could in furtherance of their election enlist the support of certain Government servants. The District Magistrate, Lucknow organised the opening of eye relief camps, and these functions were utilised for the election propaganda of the respondent Nos. 1 and 2. An eye relief camp was proposed to be opened on December 16, 1951 at Kakori by Sri C. B. Gupta, Minister, Civil Supplies U.P. one of the chief organisers of the election of the respondent Nos. 1 and 2. An election meeting was advertised by the workers of the respondent Nos. 1 and 2 to be held within a short distance of the proposed eye relief camp on the same day. This meeting was amongst others addressed by Sri G. B. Pant, Chief Minister U.P., Sri C. B. Gupta and the respondent No. 1. It was also attended by the Patwaris and Qanungo of the Kakori circle including the Tehsildar, Lucknow and the Deputy Superintendent of Police, Lucknow.
>
> On December 27, 1951 an eye relief camp was similarly organised and opened at Kakori. The ceremony this time was performed by Mrs Vijai Lakshmi Pandit and immediately thereafter from the same platform and at the same place election speeches were made and the audience exorted to vote for Mrs. Vijai Lakshmi Pandit, a candidate for the House of the people from that area and respondent Nos. 1 and 2. This meeting was attended by the District Magistrate, Lucknow, Sub Divisional Magistrate, Lucknow, Deputy Superintendent of Police, Lucknow, Tahsildar, Lucknow and Patwaris and Qanungo of Kakori circle. The respondent Nos. 1 and 2 by this device succeeded in creating an impression on the voters that they had the support of the district officials."

There was no list of particulars attached to the petition as provided in section 83 (2) of the Act.

On 15th December 1952 the first appellant filed his written statement, and therein he stated with reference to paragraph 7(c) that it was 'wrong and denied that the answering respondent in furtherance of his election enlisted the support of any Government servent." He also stated that the allegations were not accompanied by list, and were vague and lacking in particulars and were liable to be struck off. The written statement of the second appellant filed on 20th December 1952 was also on the same lines as those of the first appellant. Respondent No. 4, who was a defeated candidate and supported the respondent herein, filed a written statement on 3rd December 1952 wherein he alleged that the appellant had obtained service of village officers, such as Lambardars and Sarpanches in furtherance of their election prospects. Respondent No. 9 who was another defeated candidate also filed a written statement on the same day, adopting the allegations in the statement of the fourth respondent adding Mukhias to the list of village officials whose assistance was procured by the appellants. On 16th January 1953 the respondent filed a replication to the written statement of the appellants, wherein he stated as follows:

> As stated in the petition. The denial of the respondent Nos. 1 and 2 is absolutely wrong, in as much as many Government servants worked for, issued appeals and became polling agents for respondents 1 and 2. In these meetings at Kakori many Government servants took part and some worked for furtherance of the election of respondents Nos. 1 and 2 and issued appeals to the public to vote for respondents Nos. 1 and 2 and also became their polling agents."

On 24th January 1953 the appellants filed a written statement objecting to the reception of the replication on the ground that the petitioner (respondent) had no right to file it and that it was a mere device to add to the original petition. They also filed an application on the same date for a preliminary hearing of certain issues relating to the contentions raised by them in their written statements that the allegations in the petition were vague and should be struck off for want of particulars, and the same was posted for hearing on 25th February 1953. Arguments were heard on these issues on that day and again on 25th August 1953 and the

following days, and on 31st October 1953 the Tribunal passed an order striking off some of the allegations in the petition and calling upon the petitioner to give particulars in respect of others. Dealing with paragraph 7(c) of the petition, the order stated:

> "Paragraph 7 (c) is not vague. It shall remain as it is. Corresponding paragraph of the replication introduces some new matters. Therefore the same shall be disregarded. The petitioner has not named the Government servants. He shall supply the names of the officials including those of the Patwaris and Qanungoes."

Meantime, after the preliminary argument aforesaid had commenced and before it was concluded, the respondent filed on 27th February, 1953 an application for amendment of this petition, the order on which is the main target of attack in this appeal. It was presented under section 83(3) of the Act, and prayed that the petitioner "be allowed to amend the details of para. 7(c) by adding the words 'Village Headmen' with their names and the fact that they worked and issued appeal and subsequently they became the polling agents of respondents Nos. 1 and 2". It mentioned for the first time the names of Mukhias whose assistance the appellants have been held to have obtained. This application was opposed by the appellants on the ground that the amendment did not fall within section 83(3), that the matters sought to be introduced thereby were new charges, and if admitted they would alter the very character of the petition, and that it should not be granted, as a fresh petition on those allegations would be barred on that date. It should be mentioned that on 22nd January, 1953 respondent No. 4 had filed an application to raise additional issues on his averments that the appellants had obtained assistance from the village officers. That application was also contested by the appellants. It would appear that this application and the amendment petition were heard together. On 10th November, 1953 the Tribunal by a majority passed an order dismissing the application of the fourth respondent for additional issues. On 28th November, 1953 it allowed, again by a majority, the application of the respondent for amendment observing that the matters sought to be introduced were merely particulars in respect of the charge set out in paragraph 7(c) of the petition, "that the respondents 1 and 2 could in furtherance of their election enlist the support of certain Government servants", and further that Order 6 Rule 17 of the Civil Procedure Code was applicable to proceedings before the Election Tribunal.

The appellants attack the correctness of this conclusion, and contend that the Tribunal had no power either under section 83(3) or under Order 6, Rule 17 to order the amendment in question. They also contend that even if the Tribunal had the power to order amendment, the order in question is not justified on the merits, and is erroneous. It is necessary to set out the statutory provisions bearing on the question:

> "S.81(1). An election petition calling in question any election may be presented on one or more grounds specified in sub-sections (1) and (2) of section 100 and section 101 to the Election Commission by any candidate at such election or any elector in such form and within such time but not earlier than the date of publication of the name or names of the returned candidate or candidates at such election under section 67, as may be prescribed.
>
> S.83(1). An election petition shall contain a concise statement of the material facts on which the petitioner relies and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908) for the verification of pleadings.
>
> (2) The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of commission of each such practice.
>
> (3) The Tribunal may, upon such terms as to costs and otherwise as it may direct at any time, allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition.
>
> 85. If the provisions of section 81, section 83 or section 117 are not complied with, the Election Commission shall dismiss the petition.

90(2) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure 1908 (Act V of 1908), to the trial of suits.

90(4) Notwithstanding anything contained in section 85, the Tribunal may dismiss an election petition which does not comply with the provisions of section 81, section 83 or section 117

92 The Tribunal shall have the powers, which are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit in respect of the following matters —

(a) discovery and inspection,

(b) enforcing the attendance of witnesses and requiring the deposit of their expenses,

(c) compelling the production of documents,

(d) examining witnesses on oath,

(e) granting adjournments,

(f) reception of evidence taken on affidavit, and

(g) issuing commission for the examination of witnesses, and may summon and examine *suo motu* any person whose evidence appears to it to be material, and shall be deemed to be a civil court within the meaning of section 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898)"

Now, we start with this that section 83(3) grants a power to the Tribunal to amend particulars in a list What is its scope? Is it open to the Tribunal acting under this provision to direct new instances of the corrupt practices to be added to the list? And if it is, is that what it did in the present case? It is contended by the learned Solicitor-General on behalf of the appellants that section 83(3) does not authorise the inclusion of new instances of corrupt practices, and that all that could be ordered under that provision was giving of fuller particulars in respect of instances given in the petition. The argument in support of this contention might thus be stated Section 81 requires that the election petition should state the grounds on which it is founded Section 83(1) enacts that it should contain a concise statement of the material facts on which the petitioner relies, and section 83(2) provides that the petition should be accompanied by a list containing full particulars of the corrupt or illegal practices When the three provisions are read together, it is clear that the legislature has made a distinction between grounds in section 81(1) facts in section 83(1) and full particulars in section 83(2), and in this context, facts in section 83(1) must mean instances of the charge on which the petition is grounded and the particulars referred to in section 83(3) can only mean particulars in respect of the instances set out in the petition in accordance with section 83(1) The consequence is that an instance of a corrupt practice not given in the petition, cannot be brought in under section 83(3) On this reasoning, it is contended that the order of the Tribunal dated 28th November, 1953 permitting the respondent to allege that the appellants obtained the assistance of four Mukhias, whose names were mentioned for the first time in the amendment petition is outside the ambit of the power conferred by section 83(3)

We are unable to agree with this contention In our opinion, section 81(1) and section 83, sub sections (1) and (2), when correctly understood, support the contention of the respondent that the Tribunal has authority to allow an amendment even when that involves inclusion of new instances, provided they relate to a charge contained in the petition Taking first section 81(1), it enacts that a petition may be presented calling an election in question on one of the grounds specified in section 100, sub sections (1) and (2) and section 101 These sections enumerate a number of grounds on which the election may be set aside, including the commission of the corrupt practices mentioned in section 123 of the Act, and quite clearly it is the different categories of objections mentioned in section 100, sub sections (1) and (2), section 101 and section 123 that constitute the grounds mentioned in section 81(1) Then we come to section 83(1) It says that the petition should contain a concise statement of the material facts, and that would include facts relating to the holding of the election, the result thereof, the grounds on which it is sought to be set aside, the right of the petitioner to present the petition and the like Then section 83(2) enacts that when there is an allegation of corrupt or illegal practice, particulars thereof should be given in a separate list If the grounds on which an election is sought to be set aside are something

other than the commission of corrupt or illegal practices, as for example, when it is stated that the nomination had been wrongly accepted or that the returned candidate was not entitled to stand for election, then section 83(2) has no application, and the requirements of section 83(1) are satisfied when the facts relating to those objections are stated The facts to be stated under section 83(1) are thus different from the particulars which have to be given under section 83(2) When, therefore, an election is challenged on the grounds that the candidate has committed the corrupt practices mentioned in section 123, instances constituting particulars thereof will properly fall within section 83(2) and not section 83(1). The result is that the power under section 83(3) to allow further and better particulars will include a power to allow fresh instances of the charges, which form the grounds on which the election is questioned

We are fortified in this conclusion by decisions of English Courts, on statutory provisions which are in *pari materia* with our enactment Section 20 of the Parliamentary Elections Act, 1868 enacts that an election petition shall be in such form and state such matters as may be prescribed, that is, by the rules Rule 2 of the Parliamentary Eelection Rules provides that the Eelection petition "shall state the holding and result of the election and shall briefly state the *facts and grounds* relied on to sustain the prayer" Rule 5 gives the form of an eelction petition and the third paragraph therein as follows

> "Any your petitioners say (here state *the facts and grounds* on which the petitioners rely)"

The true scope of these provisions came up for consideration in *Beal* v *Smith* (1) There, the election petition merely stated that "the respondent by himself and other persons on his behalf, was guilty of bribery, treating and undue influence". The respondent took out an application for an order that the petition be taken off the file on the ground that it merely stated the grounds but not the facts constituting the particulars as required by Rule 2 In the alternaive it was prayed that the petitioners should be directed to give particulars relating to the several corrupt practices In rejecting the former prayer, Bovill C J observed·

> "Now, with regard to the form of the petition, it seems to me that it sufficiently follows the spirit and intention of the rules, and no injustice can be done by its generally because ample provision is made by the rules to prevent the respondent being surprised or deprived of an opportunity of a fair trial, by an order for such particulars as the judge may deem reasonable I think, therefore, it would be qurte useless to require anything further to be stated in the petition than appears here"

With reference to the alternative prayer, it was held that an order that the particulars be furnished three days prior to the trial was a proper one to be passed. A similar decision was given in the *Greenock Election* Case, a report of which is given in a footnote at page 150 of *Beal* v *Smith* (1)

These decisions establish that the requirements as to statement of *grounds and facts* is satisfied when the charge on which the election is sought to be set aside is set out in the petition, that the failure to give therein particulars of corrupt and illegal practices on which it is founded is not fatal to its maintainability and that it is sufficient if the particulars are ordered to be furnished within a reseasonable time before the commencement of the trial.

On the same reasoning, the conclusion should follow that section 81 (1) and section 83(1) are complied with, when the grounds on which the election is sought to be set aside, are stated in the petition those grounds being as already stated the matters mentioned in section 100, sub-sections (1) and (2), section 101 and section 123, which is attracted by section 100 (2) (b), and that the particulars in respect of those grounds, when they are charges of corrupt or illegal practices, fall within section 83 (2) There is, it should be observed, nothing in the Election Law of England corresponding to section 83(2), the question of particulars being left there to be dealt with under the Rules applicable to the trial of causes The consequence is that while under the English practice, the petitioners are not obliged to state particulars of corrupt practices in their petition, under section 83 (2) a statement of those particulars must be made in the petition in a separate list annexed thereto But this difference is more a matter of form than of substance, as section 83 (3) provides for particulars being called for and

(1) (1869) L R 4 Common Pleas 145

Section 83 (3) provides, it should also be noted, for the list of particulars being amended or enlarged. It is not, however, to be inferred from this that when the particulars are mentioned in the body of the petition, they could not be amended. The reference to the list in section 83 (3) must be taken along with the provision in section 83 (2) that particulars are to be set out in a list to be attached to the petition. The substance of the matter, therefore, is that under section 83(3) particulars can be amended and supplemented, and the reason of it requires that the power could be exercised even when the particulars are contained in the body of the petition. And even when there is no list filed, as in the present case, it would be competent to the Tribunal to allow an amendment giving for the first time instance of corrupt practice, provided such corrupt practice has been made a ground of attack in the petition.

One other argument urged by the appellants against this conclusion must now be considered. It is based on the language of section 83 (3). That section, it is urged, allow firstly an amendment of the particulars included in the list, and secondly "further and better particulars included in regard to any matters referred to therein" and that, according to the appellants, means the particulars already given in the list It is accordingly contended that the power to allow further and better particulars can be exercised only in respect of particulars already furnished, whether they be contained in the body of the petition or in the list, and that therefore an order permitting inclusion of new instances is outside the purview of section 83 (3). The assumption underlying this contention is that the word "matter" in section 83 (3) means the same thing as "particulars". We see no reason why we should put this narrow construction on the word "matter". That word is, in our opinion, of wider import than "particulars", and would also comprehend the grounds on which the election is sought to be set aside. If the construction contended for by the appellant is correct the relevant portion of section 83 (3) will read as "further and better particulars in regard to any particulars referred to therein", and that does not appear to us to be either a natural or a reasonable reading of the enactment. Having regard to the scheme of the Act stated above, we think that section 83 (3) is intended to clothe the Tribunal with a general power to allow not merely an amendment of particulars already given but also inclusion of fresh particulars, pleading new instances, subject to the condition that they are in respect of a ground set out in the petition. This is in accordance with the law and practice obtaining in the Election Courts in England. Thus, in the *Cerrickfergus Case* (1) in ordering an application for amending particulars, so as to include matters which had only then come to the knowledge of the petitioner, O'Brien J. observed:

> "In some respects the petitioner came down here manifestly ignorant of the exact grounds upon which several of the charges of the petition were founded.
>
> "I therefore thought it reasonable upon a proper case being made out to allow the petitioner to amend his bill of particulars by adding such facts as only recently came to his knowledge. I consider that in the trial of these petitions, where the purity of the election is questioned, the most searching enquiry should be instituted, and it is the duty of the Judge to afford every facility in his power to that investigation."

In the *Dublin Case* (2), the order was one directing a list of particulars to be amended, the court observing:—

> "I shall allow the utmost latitude to amend, unless it is a case on which I see that the party kept back information at the time the list was furnished."

In this view, the order of amendment in question is not open to attack on the ground that it has permitted new instances to be raised. What has to be seen is whether those instances are, in fact, particulars in respect of a ground put forward in the petition or whether they are, in substance, new grounds of attack.

Before dealing with this question, it will be convenient to consider the alternative contention raised for the respondent that even if the Tribunal had no power to order the amendment in question under section 83(3) of the Act, it was competent to do so under Order 6, Rule 17, C.P.C. and that this Court should not in special appeal interfere with the discretion exercised by it in making the order. That raises the question which has been very much debated both in the Election Tribunals and in the High Courts of the States as to

(1) 1 O'M. & H. 264, 265
(2) 1 O'M. & H. 270, 272.

whether Order 6, Rule 17 applies to proceedings before Election Tribunals. Mr. K. S. Krishnaswami Ayyangar, learned counsel for the respondent, contends that it does, by force of section 90(2) of the Act, under which the Tribunal is to try to petition "as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of Suits". Now, in *A.G. v. SILLEM* (1) it was stated by Lord Westbury that the word "practice"—and it means, as observed in *Payser v. Miors* (2) the same thing as procedure—denotes "the rules that make or guide the *cursus curiae*, and regulate the proceedings in a cause within the walls or limits of the Court itself." And these proceedings include all steps, which might be taken in the prosecution or defence thereof, including an application for amendment. In *Maude v. Lowley* (3) the point arose for decision whether the power conferred on the Election Court by Section 21(5) of the Corrupt Practices (Municipal Elections) Act, 1872, to try the petition subject to the provisions of the Act, *as if it were a cause within its jurisdiction*, carried with it a power to order amendment of the petition. It was held that it did. That precisely is the point here.

But it is contended for the appellants that Order 6 Rule 17 cannot be held to apply to proceedings before the Tribunal by reason of section 90(2), because (1) under that section, it is only the *trial* of the election petition that has to be in accordance with the provisions of the Civil Procedure Code, and the question of amendment of the petition relates to a stage anterior to the trial; (2) section 92 enumerates certain matters in respect of which the Tribunal is to have the powers of a court under the Civil Procedure Code, and as amendment of pleadings is not one of them, Order 6 Rule 17 must be held to have been excluded from its jurisdiction (3) the Act makes a distinction between procedure and powers, section 90(2) extends the provisions of the Civil Procedure, and power to order amendment under Order 6 Rule 17 is not within the Extension; and (4) section 90(2) is, in any event, subject to the provisions of the Act and the rules made thereunder, and the power of amendment under section 83(3) being limited to particulars, the general power of amendment under Order 6, Rule 17 must be held to have been excluded. The correctness of these contentions must now be examined.

(1) Taking the first contention, the point for decision is as to what the word 'trial' in section 90(2) means. According to the appellants, it must be understood in a limited sense, as meaning the final hearing of the petition, consisting of Examination of Witnesses, filing documents and addressing arguments. According to the respondent, it connotes the entire proceedings before the Tribunal from the time that the petition is transferred to it under section 86 of the Act until the pronouncement of the award. While the word 'trial standing by itself is succeptible of both the narrow and the wider senses indicated above; the question is, what meaning attaches to it in section 90(2), and to decide that, we must have regard to the context and the setting of the enactment. Now, the provisions of the Act leave us in no doubt as to in what sense the word is used in section 90(2). It occurs in Chapter III which is headed "Trial of election petitions". Section 86(4) provides that if during the course of the trial any member of a Tribunal is unable to perform his functions, the Election Commission is to appoint another member, and thereupon the trial is to be continued. This provision must apply to retirement or relinquishment by a member, even before the hearing commences, and the expression "during the course of the trial" must therefore include the stages prior to the hearing. Section 88 again provides that the trial is to be held at such places as the Election Commission may appoint. The trial here must necessarily include the matters preliminary to the hearing such as the settlement of issues, issuing directions and the like. After the petition is transferred to the Election Tribunal under section 86, various steps have to be taken before the stage can be set for hearing it. The respondent has to file his written statement; issues have to be settled. If "trial" for the purpose of section 90(2) is to be interpreted as meaning only in hearing, then what is the provision of law under which the Tribunal is to call for written statements and settle issues? Section 90(4) enacts that when an election petition does not comply with the provisions of section 81, section 83 or section 117, the tribunal may dismiss it. But if it does not dismiss it, it must necessarily have the powers to order rectification of the defects arising by reason of noncompliance with the requirements of section 81, section 83 or section 117. That not being a power expressly conferred on it under section 92 can only be

(1) 10 House of Lords Case, 704, 723: 11 E.R. 1200, 1209.

(2) (1881) 7 Q.B.D. 333.

(1874) L. R. 9 C. P. 165, 172.

sought under section 90(2) and resort to that section can be had only if trial is understood as including proceedings prior to hearing. Section 92 enacts that the Tribunal shall have powers in respect of various matters which are vested in a court under the Civil Procedure Code when trying a suit, and among the matters set out therein are discovery and inspection, enforcing attendance of witnesses and compelling the production of documents, which clearly do not form part of the hearing but precede it. In our opinion, the provisions of Chapter III read as a whole, clearly show that 'trial' is used as meaning the entire proceedings before the Tribunal from the time when the petition is transferred to it under section 86 until the pronouncement of the award.

(2) The second contention urged on behalf of the appellants is that if the provisions of the Civil Procedure Code are held to be applicable in their entirety to the trial of election petitions, then there was no need to provide under section 92 that the Tribunal was to have the powers of courts under the Code of Civil Procedure *in respect of the matters mentioned therein, as those powers* would pass to it under section 90(2). But this argument overlooks that the scope of section 90(2) is in respect of a material particular different from that of section 92. While under section 90(2) the provisions of the Civil Procedure Code are applicable only subject to the provisions of the Act and the rules made thereunder, there is no such limitation as regard the powers conferred by section 92. It was obviously the intention of the legislature to put the powers of the Tribunal in respect of the matters mentioned in section 92 as distinguished from the other provisions of the Code on a higher pedestal, and as observed in *Sitaram* v. *Yograjsing* (1), they are the irreducible minimum which the Tribunal is to possess.

(3) It is then argued that section 92 confers powers on the Tribunal in respect of certain matters, while section 90(2) applies to the Civil Procedure Code in respect of matters relating to procedure, that there is a distinction between power and procedure, and that the granting of amendment being a power and not a matter of procedure, it can be claimed only under section 92 and not under section 90(2). We do not see any antitheses between 'procedure' in section 90(2) and 'powers' under section 92. When the respondent applied to the Tribunal for amendment, he took a procedural step, and that, he was clearly entitled to do under section 90(2). The question of powers arises only with reference to the order to be passed on the petition by the Tribunal. Is it to be held that the presentation of petition is competent, but the passing of any order thereon is not? We are of opinion that there is no substance in this contention either.

(4) The last contention is based on the provision in section 90(2) that the procedure prescribed in the Code of Civil Procedure is to apply subject to the provisions of the Act and the rules. It is argued that section 83(3) is a special provision relating to amendments, and that it must be construed as excluding Order 6, Rule 17. The result, according to the appellants, is that if an amendment could not be ordered under section 83(3), it could not be ordered under Order 6, Rule 17. This contention appears to us to be wholly untenable. The true scope of the limitation enacted in section 90(2) on the application of the procedure under the Civil Procedure Code is that when the same subject-matter is covered both by provision of the Act or the rules and also of the Civil Procedure Code, and there is a conflict between them, the former is to prevail over the latter. This limitation cannot operate, when the subject-matter of the two provisions is not the same section 83(3) relates only to amendment of particulars, and when the amendment sought is one of the particulars, that section will apply to the exclusion of any rule of the Civil Procedure Code which might conflict with it, though it does not appear that there is any such rule. But where the amendment relates not to particulars but to other matters, that is a field not occupied by section 83(3), and Order 6, Rule 17, will apply. The fallacy in the argument of the appellants lies in the assumption that section 83 (3) is a comprehensive enactment on the whole subject of amendment, which it clearly is not. In this view, *there is no scope for the application of* the maxim, *expre ssio unius exclusio alterius*, on which the appellants rely. It should be mentioned that the provision in section 83(2) for stating the particulars separately in a list attached to the petition is one peculiar to the Indian statutes, and the legislature might have considered it desirable *ex abundanti ca utela* to provide for a power of amendment in respect thereto. To such a situation, the maxim quoted above has no application. In Maxwell on Interpretation of Statutes, Tenth Edition, pages 316-317 the position is thus stated:

> "Provision sometimes found in statutes, enacting imperfectly or for particulars cases only that which was already and more widely the law, have occasionally furnished ground for the contention that an intention to alter the general law was to be inferred from the partial

(1) A. I. R. 1953 Bom. 293.

or limited enactment, resting on the maxim, *expressio unius, exclusio alterius*. But that maxim is inapplicable in such cases. The only inference which a court can draw from such superfluous provisions (which generally finds a place in Acts to meet unfounded objections and idle doubts), is that the legislature was either ignorant or unmindful of the real state of the law, or that it acted under the influence of excessive caution."

Vide also Halsbury's laws of England, Hailsham's Edition, Volume 31, page 506, para 661. We are accordingly of opinion that the application of Order 6, Rule 17 C.P.C. to the proceedings before the Tribunal is not excluded by section 83(3).

Turning next to the authorities, the decision of this Court in *Jagan Nath* v. *Jaswant Singh* (8) goes far to conclude the question in favour of the respondent. In that case, a petition to set aside an election was filed without impleading one of the candidates, Baijnath, who had been nominated but had withdrawn from the contest. That was against section 82 of the Act. The respondent then applied for an order dismissing the petition on the ground that it could not go on in the absence of Baijnath. The Tribunal held on this petition that the non-joinder of Baijnath was not fatal to the maintainability of the petition, and passed an order directing him to be impleaded. This order was challenged on the ground that there was no power in the Tribunal to order a new party to be impleaded. But this court repelled this contention, and held on a review of the provisions of the Act including section 90(2) that the Tribunal had the power to pass the order in question under Order 1, Rules 9, 10 and 13. This is direct authority for the position that trial for purpose of section 90(2) includes the stages prior to the hearing of the petition, and the word 'procedure' therein includes power to pass orders in respect of matters not enumerated in section 92. In *Sitaram* v. *Yograjsing* (7) it was held that 'procedure' in section 90(2) and 'powers' in section 92 were interchangeable terms, that the procedure applicable under section 90(2) was wider than what would be applicable to the hearing of a suit and that the tribunal had power in a proper case to order amendment of a petition. In *Sheo Mahadeo Prasad* v. *Deva Sharan* (9), it was held that the application of Order 6, Rule 17 to proceedings before the Tribunal was excluded by section 83(3) of the Act. For the reasons already given, we are unable to agree with this view. We are of opinion that the law was correctly laid down in *Sitaram* v. *Yograjsing* (7) and in agreement with it, we hold that the Tribunal has power in appropriate cases to direct amendment of the petition under Order 6, Rule 17.

It is next contended for the appellants that even if section 83(3) does not exclude the application of Order 6, Rule 17 to the proceedings before the Tribunal, the exercise of the power under that rule must, nevertheless, the subject to the conditions prescribed by section 81 for presentation of an election petition, that one of those conditions was that it should be presented within the time allowed therefor, and that accordingly no amendment should be allowed therefor, and that accordingly no amendment should be allowed which would have the effect of defeating that provision. The decisions in *Maude* v. *Lowley* (6) and *Birkbeck and Others* v. *Bullard* (10) are relied on in support of this contention. In *Maude* v. *Lowley* (6) the facts were that an election petition was filed alleging that the successful candidate had employed as paid canvassers residents of the ward, and that the election was, in consequence, void. Then an application was filed for amending the petition by alleging that residents of other wards were also similarly employed, and that was ordered by Baron Pollck. The correctness of this order was questioned on the ground that on the date of the application for amendment a fresh petition on those allegations would be barred, and that therefore, the Court had no jurisdiction to pass the order which it did. In upholding this contention, Lord Coleridgee C J. observed that section 21(5) gave power to the Court to amend the petition, that that power was subject to the provision of the Act, that one of those provisions was section 13(2), which prescribed the period within which an election petition could be filed that the power of amendment could be exercised only subject to this provision, and that accordingly an amendment which raised a new charge should be rejected if a fresh petition on that charge would be barred on that date. He also observed that the matter was not one of discretion but of jurisdiction. This was followed in *Clark* v. *Walland* (11). In *Birkbeck and Others*

(6) (1874) L. R. 9 Common Pleas. 165. (7) A. I. R. 1953 Bom. 293.
(8) 1954 S. C. R. 892; 1954 SCJ. 257.
(9) A. I. R 1955 Patna 81. (10) (1885-86) 2 Times Law Reports. 278.

v. *Bullard* (10), the application was to amend the petition by adding a new charge, and it was held that that could not be done after the expiry of the period of limitation fixed in the Act for filing election Petition, and the decision was put on the ground that the power to grant amendment was "subject to the provisions of the Act".

On these authorities, it is contended for the appellants that even if the Tribunal is held to possess a power to order amendments generally under Order 6, Rule 17, and order under that Rule cannot be made when a new ground or charge is raised, if the application is made beyond the period of limitation prescribed for filing election petitions. The Tribunal sought to get over this difficulty by relying on the principle well-established with reference to amendments under Order 6, Rule 17 that the fact that a suit on the claim sought to be raised would be barred on the date of the application would be material element in deciding whether it should be allowed or not but would not affect the jurisdiction of the court to grant it in except onal circumstances as laid down in *Charan Das* v. *Amir Khan* (12). But this is to ignore the restriction imposed by section 90(2) that the procedure of the court under the Code of Civil Procedure in which Order 6, Rule 17 is comprised, is to apply subject to the provisions of the Act and the rules, and there being no power conferred on the Tribunal to extend the period of limitation prescribed, an order of amendment permitting a new ground to be raised beyond the time limited by section 81 and Rule 119 must contravene those provisions and is, in consequence beyond the ambit of authority conferred by section 90(2). We are accordingly of opinion that the contention of the appellants on this point is well-founded, and must be accepted as correct.

The result of the foregoing discussion may thus be summed up:

(1) Under section 83(3) the Tribunal has power to allow particulars in respect of illegal or corrupt practices to be amended, provided the petition itself specifies the grounds or charges, and this power extends to permitting new instances to be given.

(2) The Tribunal has power under Order 6, Rule 17 to order amendment of a petition, but that power cannot be exercised so as to permit new grounds or charge to be raised or to so alter its character as to make it in substance a new petition, if a fresh petition on those allegations will then be barred.

We have now to decide whether on the principles stated above, the order of amending dated 28th November, 1953, was right and within the competence of the Tribunal. To decide that, we must examine whether what the respondent sought to raise by way of amendment was only particulars in respect of a charge laid in the petition, or whether it was a new charge. The paragraph in the petition relevant to the present question is 7(c), and that has been already set out *in extenso*. Leaving out the allegations relating to the meeting held at Kakori, what remain of it is only the allegation that "respondent 1 and 2 could in furtherance of their election enlist the support of Government servants". The word "could" can only mean that the respondents were in a position to enlist the support of Government servants. It does not amount to an everment that, in fact, they so enlisted their support. It is argued for the respondent that the allegation in paragraph 7(c) really means that the appellants had, in fact, enlisted the support of Government servants, and that that amount to a charge under section 123(8) of the Act of procuring the assistance of Government servants for furtherance of their election prospects. Why then does the petition not state it in plain terms? The difference between "could" and "did" is too elementary to be mistaken. The respondent has in other paragraphs relating to other charges clearly and categorically asserted what the appellants did and what their agents did. And why was a different phraseology adopted in paragraph 7(c)? It is to be noted that apart from this allegation, the rest of the paragraph is taken up with details of the two meetings at Kakori and it winds up with the following allegation:

> "The respondents 1 and 2 by this device succeeded in creating an impression on the voters that they had the support of the District Officials."

This suggests that the charge which the respondent sought to level against the appellants was that they moved in public so closely with high dignitaries as to create in the minds of the voters the impression that they were favoured by them. We are unable to read into the allegations in paragraph 7(c) as originally framed any clear and categorical statement of a charge under section 123(8), or indeed under any of the provisions of the Election law.

(10) (1935-36) 2 Times Law Reports 273.

(12) L.R. 4 I.A. 25.

The respondent does not dispute that the language in which the allegation in paragraph 7(c) is couched does not import that any corrupt practice had, in fact, been committed, but he contends that this defect is merely one expression, and that the appellants had understood it correctly as meaning commission of corrupt practices by them, which is what the respondent meant to assert. It is no doubt true that pleading should not be too strictly construed, and that regard should be had to the substance of the matter and not the form. Even so, what, in substance is the charge which could be gathered from a general and vague allegation that the appellants "could" enlist the support of Government officials? It should not be forgotten that charges of corrupt practices are quasi-criminal in character, and that the allegations relating thereto must be sufficiently clear and precise to bring home the charges to the candidates; and judged by that standard, the allegation in paragraph 7(c) is thoroughly worthless. The contention of the respondent that the appellants understood the allegation as meaning that they had committed corrupt practices, is not borne out by the record. In the application which the appellants filed on 24th January, 1953 for trial of certain questions as preliminary issues, they stated in paragraph 7 as follows:

> "Para 7(c). The allegation contained in this para is vague and indefinite. It nowhere alleges that the Respondent Nos. 1 and 2 obtained or procured or abetted, or attempted to obtain or procure the assistance of any government servants. No list given".

And again, in the objection filed by the appellants to the application of the respondent for amendment, they stated that it was doubtful whether even the original allegation in para 7(c) amounted to a major corrupt practice within section 123(8) of the Act. The Tribunal does not deal with this aspect of the matter and simply assumes that the petition as presented did raise a charge under section 123(8). We are of opinion that this assumption is erroneous and that its finding is vitiated thereby.

But even if we are to read "could" in paragraph 7(c) as meaning "did" it is difficult to extract out of it a charge under section 123(8). The allegation is not clear whether the Government Servants were asked by the appellants to support their candidature, or whether they were asked to assist them in furtherance of their election prospects, and there is no allegation at all that the Government servants, did, in fact, assist the appellants in the election. On these allegations, it is difficult to hold that the petition in fact raised a charge under section 123(8). It is a long jump from the petition as originally laid to the present amendment, wherein for the first time it is asserted that certain Mukhias—no Mukhias are mentioned in the petition assisted the appelants in furtherance of their election prospects, and that thereby the corrupt practice mentioned in section 123(8) had been committed. The new matters introduced by the amendment so radically alter the character of the petition as originally framed as to make it practically a new petition, and it was not within the power of the Tribunal to allow an amendment of that kind.

Counsel for the appellants also contended that even if the Tribunal had the power under Order 6, Rule 17 to permit an amendment raising a new charge, it did not under the circumstance exercise a sound and judicial discretion in permitting the amendment in question. There is considerable force in this contention. The election petition was filed on 10th June, 1952, which was the last date allowed under section 81 and Rule 119. It contained in paragraph 7(c) only the bare bones of a charge under section 123(8), assuming that it could be spelt out of it. Nothing further is heard of this charge, until we come to December, 1952, when respondents 4 and 9 who sailed with the petitioner, filed statement alleging that the appellants had obtained the assistance from Government servants including Mukhias in furtherance of their election prospects. On 16th January, 1953 the respondent herein filed a replication in which he sought to weave the above allegations into the fabric of his petition, but the result was a mere patchwork. It should be mentioned that there is no provision of Law under which a replication could be filed as a matter of right, nor was there an order of the Tribunal allowing it. On 25th February, 1953, the appellants opened their arguments at the hearing of the preliminary issue, and thereafter, with a view to remedy the defects which must have been then pointed out, the respondent filed his present application for amendment. Even, that was defective, and had to be again amended. And what is remarkable about this application is that no attempt was made to explain why it was made after such long delay and why the new allegations were not made in the original petition. The position taken up by the respondent was the amendment only made express what was implicit in paragraph 7(c). The Tribunal

was of opinion that notwithstanding all these features, the amendment should be allowed as it was in the interests of the public that purity of elections should be maintained. But then, public interests equally demand that election disputes should be determined with despatch. That is the reason why a special jurisdiction is created and Tribunal are constituted for the trial of election petitions. *Vide* the observations of Lord Simons L. C. in *Senanayake* v. *Navaratne* (13).

In the present case, having regard to the circumstances stated above, the order of amendment would be opened to grave criticism even if it had been made in an ordinary litigation, and in an election matter, it is indefensible. The strongest point in favour of the respondent is that we should not in special appeal interfere with what is a matter of discretion with the Tribunal. It is not necessary to pursue this matter further, as we are of opinion that the order of amendment dated 28th November, 1953 is, for the reasons already stated, beyond the powers of the Tribunal, and therefore must be set aside and the finding based on that amendment that the appellants had committed the corrupt practice mentioned in section 123(8) of the Act must be reversed. In this view, it becomes unnecessary to deal with the further contention of the appellants that there is no legal evidence in support of the finding of the Tribunal that they had obtained the assistance of four Mukhias in furtherance of their election prospects.

(2) Then there is the question whether the first appellant has, as held by the Tribunal, again by a majority, contravened section 123(7) of the Act. The facts found are that one Gange Prasad was engaged by the first appellant to prepare three carbon copies of the Electoral Rolls and was paid Rs. 550 at the rate of Rs 0-8-0 per hundred voters and likewise, one Viswanath Pande, was engaged to enter the names of the voters in printed cards and was paid Rs. 275 at Rs. 0-4-0 per hundred cards. Both these are undoubtedly expenses incurred in connection with the election and have, in fact, been shown by the first appellant in the return of election expenses against column K. Now the contention of the respondent which has found favour with the Tribunal is that both Gange Prasad and Viswanath Pande, must be held to have been employed for payment in connection with the election and as with their addition, the number of persons allowed to be employed under Schedule VI to Rule 118 has been exceeded, the corrupt practice mentioned in section 123(7) of the Act has been committed. It is contended by the Solicitor-General that on the facts found Gange Prasad and Viswanath Pande, cannot be said to have been employed by the first appellant, and that the conclusion of the Tribunal to the contrary is based on a misconception of law. Now whether a person is an employee or not is a question of fact, and if there had been any evidence in support of it, this Court would not interfere with the finding in special appeal But the respondent, on whom the burden lies of establishing contravention of Rule 118, has adduced no evidence whatsoever, and all that is on record is what the first appellant deposed while he was in the box He merely stated that Gange Prasad and Viswanath Pande were asked to do the work on contract basis. That is wholly insufficient to establish that there was a contract of employment of those persons by him. It was argued for the respondent that there could be a contract of employment in respect of piece-work as of time-work, and that the evidence of the first appellant was material on which the Tribunal could come to the conclusion to which it did. It may be conceded that a contract of employment may be in respect of either piece-work or time-work; but it does not follow from the fact that the contract is for piece-work that it must be a contract of employment There is in law a well-established distinction between a contract for services and a contract of service, and it was thus stated in *Collins* v *Hertfordshire C. C.* (14):

> "In the one case the master can order or require what is to be done while in the other case he cannot only order or require what is to be done but how itself it shall be done."

This court had occasion to go into this question somewhat fully in Civil Appeal No. 85 of 1956, and it was there held that the real test for deciding whether the contract was one of employment was to find out whether the agreement was for the personal labour of the person engaged, and that if that was so, the contract was one of employment, whether the work was time-work or piece-work, or whether the employee did the whole of the work himself or whether he obtained the assistance of other persons also for the work. Therefore, before it could be held that Gange Prasad and Viswanath Pande were employed by the first appellant, it must be shown that the Contract with them was that they should

(13) 1950 A.C. 640.

(14) (1947) K. B. 598 at p. 615.

personally do the work, with or without the assistance of other persons. But such evidence is totally lacking, and the finding therefore that they had been employed by the first appellant must be set aside as based on no evidence.

Neither of the grounds on which the election of the appellants has been declared void, could be supported. We must accordingly allow the appeal, set aside the order of the Tribunal, and dismiss the election petition filed by the respondent, with cost of appellants throughout.

(Sd.) N. H. BHAGWATI, J.
(Sd.) T. L. VENKATARANA AIYAR, J.
(Sd.) BHUNESHWAR R. SINRA, J.
(Sd.) S. K. DAS.

The 21st December, 1956.

[No. 19/320/52-Elec.III/5373.]

By Order,

A. KRISHNASWAMY AIYANGAR, Secy.

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